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THE DRAFTEE AND INTERNAL SECURITY

A study of the Army Military Personnel Security Program

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Belmont, N.Y. 10013
9/1/54 E.T. 1/2

by
Rowland Watts

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UNDESIRABLE DISCHARGE

FROM THE ARMED FORCES OF THE
UNITED STATES OF AMERICA

THIS IS TO CERTIFY THAT

Name, date, and official signature blocked out.

WAS DISCHARGED FROM THE
ARMY OF THE UNITED STATES

ON THE DAY OF

AS UNDESIRABLE

SR 600-220-1 applies



Lieutenant Colonel, Adjutant General's Corps

"Suitable for framing"

THE DRAFTEE AND INTERNAL SECURITY

A study of the
Army Military Personnel Security Program
and its effects upon persons inducted
under the provisions of the
Universal Military Training and Service Act

- - - - -

With an analysis of the
legal basis
for the applicable regulations

by

Rowland Watts
of the Baltimore Bar

To be released by
WORKERS DEFENSE LEAGUE
112 East 19 Street
New York

PREFATORY NOTE

This is a study of the effect on draftees under the Universal Military Training and Service Act, as amended, of the Army Personnel Security Program. It is specifically concerned with SR 600-220-1, and related regulations. It examines the legal basis for this program, the administrative application of it and some of its practical outcomes. While its analysis and conclusions are implicitly suggestive of changes in the program, it is not an attempt to devise a security program which may be conformable to civil rights.

The study was undertaken by the writer as an outgrowth of his experience in the private practice of law at Baltimore, Maryland, and as National Secretary of the WORKERS DEFENSE LEAGUE. He has been assisted in it by several score attorneys throughout the country who have made their files, experience and time available to him. Completion of the study has been greatly facilitated by a grant-in-aid from the FUND FOR THE REPUBLIC. This assistance is gratefully acknowledged.

Scope of Inquiry

At the outset it was determined that this examination should be confined solely to draftees. Voluntarily enlisted men and Reserve Officers were excluded from consideration. From practical considerations of available time and to achieve the lowest common denominator of persons covered, persons drafted under the Doctors and Dentists draft were also excluded.

One hundred and ten cases were examined; eighty-seven in detail, partial information was obtained in the others. Geographically, the cases are distributed from Eglin, Florida, to Boston, Massachusetts, on the East Coast; from Aberdeen, Washington, to San Diego, California, on the West Coast; with cases centering around Detroit, Chicago, and St. Louis in the middle. In all, twelve cities were visited; forty-three lawyers were interviewed and pertinent information obtained from twenty-eight of them.

Use of "Confidential" and Other Classified Material

There has been little consistency by the Army in releasing material without restriction, in marking it "Confidential" or "Confidential - Modified Handling Authorized", or in delivering it to the inductee or his counsel under threat of prosecution under the Espionage Law (18 USC 793, 794) if its contents are disclosed. Material in each category has been examined. Every effort has been made to preserve the anonymity of the attorney and his client.

Full responsibility for the disclosure of the facts herein, the analysis of them, and the conclusions drawn therefrom is assumed by the writer.

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INTRODUCTION

A careful study of the Army Military Personnel Security program and its application to inducted men makes it difficult to avoid the conclusion that the ideal draftee is an only child of spontaneous generation who, despite a hermit childhood, has miraculously acquired the ability to read and write English but has never made use of these useful skills.

That this judgment is harsh is admitted; it was reluctantly evolved. Only such a formulation can explain this program and its practical application. That, or a motivation that goes beyond the ostensible purpose of it.

This purpose as stated, is:

"the rejection of persons who would otherwise be inducted ~~or involuntarily ordered into the Army when retention in~~ or acceptance into the Army is not clearly consistent with the interests of national security." SR 600-220-1. 1a, Purpose.

This purpose does not include the right to stigmatize a man for life for pre-induction activities which have nothing to do with the character of service he has rendered in the Army. This is particularly true when the Army knew, in advance of induction, of these activities and knew that, on the basis of them, it would not permit him to serve normally; or, having permitted him to serve, does not accord him the "Honorable" separation to which he is entitled based on "the character of the service he has rendered;"

or, having accorded him such an "Honorable" separation, attempts to control his political, social, and marital life under threat of an "Undesirable" discharge after six post-service years of inactive duty in the Army Reserves.

The Army has lost sight of the purpose of security within the Armed Forces. It has lost sight of its own declared policy. It has lost sight of the material with which it is dealing. And this last myopia is the most serious of all.

This "material", that we are considering, is young men in their late teens or early twenties and the period of their lives that we are considering is, roughly, from fifteen to twenty years of age. There are many Juvenile or Youth Courts which grant "youthful offender" treatment to a boy who commits a serious crime during the greater part of this period. No criminal record, no life handicap is created. ~~Not so the Army. It brands a man~~ for his non-criminal, perfectly legitimate, activities at the age of fifteen. In one case, it has threatened to brand him for his alleged associations at the age of eight. It threatens to brand a man for the accident of having been born into a politically-unacceptable family. It threatens to brand him if he marries a girl whose family is politically-unacceptable.

This "branding" is not a theoretical thing. A man with an "Undesirable" discharge from the Army has little hope of getting an industrial job or any other job with a productive future. Even a "General Discharge under honorable conditions" creates insurmountable obstacles in many fields. The man with no discharge

at all, pending "determination", is in a never-never land of employment hopelessness. Seven jobs in three months is one fantastic fact. After three Honorable Discharges and with no charges lodged against him, where will this man turn for his eighth job?

These aspects will be considered in the body of the study and in the conclusions. However, they are not being prematurely raised. At each step the simple question must be omnipresent: "How does this promote the interests of the national security?" If the answer is that it does not, as the writer believes it must be in most instances, then the inevitable question must be, "Then why does the Army do it?"

It is a basic assumption that the Army does not act through malice. It has not assumed the responsibility of punishing political dissidence in the very young out of sheer desire to inflict animadversion. This cannot be the Army's motive. Therefore, it would seem that the Army is acting through ignorance, fear, a misconception of the Congressional intent, or a calculated anticipation of what it would like the Congress' future intent to be.

The Army is obviously ignorant of the social motivations which cause young people to join or seek associations out of their family circle. Not all Boy Scout troops or Sunday School classes are attractive. The urge to leave a crowded, cold-water flat to attend a dance, regardless of sponsorship, is too often equated

with a revolutionary resentment of the economic conditions which made the flat possible: Much of this will appear in the cases studied.

It is with diffidence that one charges an agency responsible for the defense of the country with fear. Yet the Army is afraid of politically-potent public opinion. There was the day when the Army would "eliminate" a person whose security status it questioned by giving him a discharge based "on the character of service he had rendered." But, no more. As will be seen, the most such a person can hope for is a "General Discharge", regardless of his service.

The Army clearly has a misconception of the intention of the Congress at the time it enacted the Universal Military Training and Service Act. It is inconceivable that the Congress intended to delegate to the Army political and social control over every young man subject to the Selective Service law from the dawn of his mature understanding until he approaches thirty. Yet that is the effect of the Army's application of what it considers to be the law. Through the threat of an "Undesirable" discharge, it says, "Conform, not only on active service but for the full term of your developing maturity."

Thus it seems that the Army is operating this program through ignorance, fear, and a misconception. Is this all?

At a recent conference held in Washington, D. C., many government officials, industrial and union leaders, and lawyers gathered together to discuss security in defense industry.

The chief security officer for the Department of Defense strongly advocated the passage of the Defense Facilities Security Act (the Butler bill). This proposed legislation requires security clearance of all those who have access to "defense facilities," not just security-sensitive jobs. This would include virtually all industry and, probably, New York's Grand Central Station. The Defense Department's spokesmen insisted that it was "primarily" interested in eliminating the small number of "hard-core communists" from any access to any plant that has a government defense contract. He insisted, however, upon the necessity of the all-inclusive provisions of the pending bill for use in an "emergency situation."

This bill well may not pass; it or similar legislation will have formidable opposition in the foreseeable future. Now what might be the Army's position in this situation? It wants this legislation. It probably won't get it very soon. An almost as effective, albeit somewhat slower, resolution of the problem from the Army's standpoint is to screen the future labor force of the country as it passes through its hands and render it impossible for those it remotely suspects to ever enter an industrial plant. This possibility, however, is beyond the scope of this study.

II

THE RIGHTS OF INDUCTEES

Every young man of draft age is entitled to the ordinary rights of every other civilian and, in addition, is entitled to the special rights pertinent to him under the Selective Service law and Army regulations. These special rights are:

1. The right not to be drafted unless he comes within the provisions of the Universal Military Training and Service Act, as amended, and the valid regulations made thereunder.

2. The right, as this is a "Military Training and Service" law, not to be drafted into the Armed Forces if the Armed Forces know or have reason to know that he will not be permitted to serve on the same basis as any other inductee.

3. The right, if he is drafted into the Armed Forces, to serve on the same basis as every other inductee within the limits of his capabilities:

4. The right upon completion of his term of active service to a separation, and upon completion of his term of reserve service to a discharge, based upon "the character of the service he has rendered while in the Armed Forces."

The Army deprives him, in many instances, of these second, third, and fourth rights under existing regulations and often in disregard of existing regulations. A quick summary of what happens to a draftee (sometimes called by the Army an "inductee")

will help in the discussion of the regulations.

What Happens

A young man, subject to the provisions of the Universal Military Training and Service Act:

- (1) Registers when he reaches eighteen years of age and, subject to appropriate regulations, in due course,
- (2) Is inducted at an Induction Center, from which he is sent to a Reception Center or a Base Camp, where, a few days later, he
- (3) Accomplishes or refuses to accomplish a Loyalty Certificate. If he refuses to accomplish it "in its entirety" or discloses any "derogatory information," he
- (4) Is Investigated* to determine whether his "retention in the Armed Forces" is 'clearly consistent' or 'inconsistent' with "the interests of national security." At the same time, he
- (5) Is "Flagged" and placed on Specially Controlled Duties.

This means he is assigned to doing nothing of importance that requires special training and cannot be promoted, transferred, or discharged until the investigation is completed and the resultant action "accomplished." This may continue for his full twenty-four months of active service. Eventually, he

- (6a) Is Cleared.** If this happens, he won't know it except

* This investigation may, of course, be initiated independently of what he indicates or fails to indicate on the "Loyalty Certificate."

** At any step in which he is "cleared" the succeeding steps are omitted unless a new investigation is instituted.

by transfer to another unit or to a job that has some significance in terms of military training;

or

(6b) Is Served with a Letter of Allegations of "Derogatory Information." If this happens he can file a written answer within fifteen days; can ask for a discharge within five days, agreeing to accept an "Undesirable" discharge; or

(7) Can ask for a Hearing before a Field Board of Inquiry.

If he does this, he is assigned Military Defense Counsel and has made available for his inspection a G2 Summary of Information in the "Confidential" file concerning him (this only within the last seven months). He is entitled to civilian counsel at his own expense. He then

(8) Has a Hearing. The Field Board of Inquiry sometimes receives into evidence a "Confidential" file, the contents of which are unavailable to the inductee. More often, the government introduces no evidence whatsoever. The inductee may thereupon refute this undisclosed "information" by witnesses, affidavits, or personal testimony. After the Field Board has considered this "evidence", pro and con, the inductee

(9) Fails to receive the Findings and Recommendations of the Field Board of Inquiry because they are confidential and have been forwarded to the Army Review Board. Instead, he

(10) Receives a Transcript of the Field Board Hearing with the Findings and Recommendations omitted, and with all reference to the G2 Summary of Information deleted (including deletion in many cases of his counsel's specific objections to the validity of the Summary).

He

(11) May file additional information and a brief for consideration by the Army Review Board but he or his counsel cannot appear before it. (This is like going to the Court of Appeals without knowing the lower court's decision.) He

(12) Will know that the Army Review Board makes Findings and Recommendations to the Secretary of the Army but he won't know what they are. Eventually, he

(13a) Will be Cleared. If this happens, he won't know it except by transfer to another unit or to a job that has some significance in terms of military training, or by an "Honorable Separation from Active Service" upon completion of his twenty-four months of service;

or

(13b) Fails to be cleared. If this happens, he may not know it until the completion of his twenty-four months of active service. Eventually, he

(14) Receives an "Undesirable Discharge," or a "General Discharge under Honorable Conditions" *if he is given the benefit of a doubt. He now, if he chooses,

(15) Appeals to the Army Discharge Review Board, which will grant him a hearing if he wants one. The Discharge Review Board, however, is not a part of the Security Program and has no criteria to guide its determination. If its decision is adverse, as it is likely to be in a security case, he now,

(16) Appeals to the Board for the Correction of Military Records. This is the next to the last step in an already lost cause. There

* The difference between an undesirable and general discharge is set forth in Chapter IV.

will be no change unless there is an obvious technical or mechanical error. Finally, he

(17) Appeals to the Secretary of the Army and the Secretary of Defense, knowing that there will be no modification unless he can produce some startlingly significant new evidence. At last, unless his counsel can find a basis for Court Action, he

(18) Looks for a job, permanently branded as "Disloyal and Subversive" (Undesirable Discharge), or either "Almost Subversive" or "Incompetent" (General Discharge).

* * * * *

But let's go back to Step (4) -- the Investigation. If it and subsequent investigations fail to produce sufficient "de-rogatory information" to justify institution of separation proceedings, the inductee will be continued in service until the completion of his twenty-four months and, if his service has been satisfactory, he will receive an

"Honorable Separation from Active Service and assignment to the Army Reserves."

This reserve service if it is completed on an inactive status will continue for six years under existing law. At any time during this six year period, the inductee's political, social, and marital choices are controlled by the Army under threat of an "Undesirable" discharge.

III

THE REGULATIONS

The basic Army Security Regulations are "Special Regulations No. 600-220-1, Military Personnel Security Program," adopted in its current form June 18, 1954. It superceded the original SR 600-220-1, adopted December 6, 1950. "Army Regulations 615-370, Disloyal or Subversive Military Personnel," which were superceded July 13, 1954, by SR 600-220-1, C 1, is considered in part because it has current repercussions in many cases. SR 600-220-1 was further modified by C 2 on November 10, 1954. Portions of other pertinent regulations will be referred to in the analysis.

In general, these regulations set forth the policy concerning security for all Military Personnel, the security basis ~~for denying induction (or enlistment),~~ the standards for retention, the procedures for investigation and determination, and the method of disposition of all cases where security is at issue.

A. Policy

"The Department of the Army will assume that the acceptance or retention of any officer, warrant officer, or enlisted man* is clearly consistent with the interests of national security." (Par. 3a**

* While some of the regulations designate a person inducted under Selective Service as an "Inductee" as distinguished from an "enlisted," such distinction is not consistently adhered to and many regulations which apply specifically to "enlisted men" are applied equally to "inductees" without specific reference to them. An "inductee" seems to be a sub-species of "enlisted man."

** Unless otherwise indicated all Paragraph references in this Chapter refer to SR 600-220-1, as amended.

"When reasonable grounds exist that retention of a member is not clearly consistent with the interests of national security he will be relieved from active duty or discharged; except that an inductee normally will not be discharged as a security risk unless his retention is inconsistent with the interests of national security." (Par. 3 b) (Emphasis supplied.)

The distinction between "not clearly consistent" and "inconsistent" is a fine one; its application is obscure. Apparently it has nothing to do with the burden of proof and little to do with the weight of the evidence. A study of security cases involving enlisted personnel would be necessary to attempt to pin down the distinction; such a study would probably be unrewarding. In the three cases involving voluntarily enlisted men which have come to the attention of the writer independent of this study the distinction has been undetectable.

Prior to November 10, 1954, (when the Field Board of Inquiry officially discontinued announcing its findings and recommendations), the Field Board apparently drew no such distinctions. In the cases examined, the Field Board would find that the man's retention in the Army was either "clearly consistent" or "not clearly consistent" with the interests of national security and recommend accordingly. As the Army Review Board's findings and recommendations have never been announced, it has been impossible to determine whether or not it made any distinction.

In an apparent effort to explain this and to further delineate policy, Par. 3b states parenthetically:

"(The standard for retention in service of an inductee is of necessity somewhat lower than the standard for other categories of personnel. Thus an inductee may be retained to perform his obligated service in a specially controlled duty under conditions which would require discharge of an officer or an enlistee...)"

In practice, as will appear later, this has not worked to the advantage of the inductee.

B. Loyalty Certificate (Par. 12)

"All members or prospective members of the Army Establishment are required to accomplish a Loyalty Certificate for Personnel of the Armed Forces (DD Form 98) as follows:

.

"d. Each registrant entering into active military service prior to induction." (Emphasis in the regulation.)

(A photostatic copy of DD 98 appears in Appendix B.)

This policy, adopted February, 1954, has been ignored by the Army in many cases. In none of the examined cases was the registrant given an opportunity to execute DD 98 prior to induction.* Where information which would normally appear on this form has been volunteered to the Local Draft Board, it has not been transmitted to the Army or, if it has, has been ignored by it only to appear later as "derogatory information" against the man.

In Case No. 10, ** for example, the man volunteered the information to his local draft board that he had been screened off the ships as a merchant seaman as "a poor security risk." This had no effect whatsoever in preventing or delaying his in-

* The writer is familiar with one case where the Draft Board submitted DD 98 to the registrant for "accomplishment." As this man has claimed Conscientious Objection to Military Service and as this is an Armed Forces form required by an Armed Forces regulation which has no application to conscientious objectors, he has refused to sign it. He has been threatened with "possible prosecution" under the Selective Service law for this refusal.

** All case numbers refer to Appendix C (separate volume) of this report.

duction into the Armed Forces. He was inducted and for the greater part of his period of active service was permitted to serve normally. In fact, he was a weekly instructor in an indoctrination course on world events to the troops stationed in the Western Sector of Berlin. He was separated from active duty on the completion of the two years required by law with a "Character of Service to be Determined." (See "Separation and Discharge," below.) It was not until four months after his separation and after probing of the Adjutant General by civilian counsel that he received his "Letter of Allegations." These allegations, except for one which was inherently impossible, were identical with the charges on which the Coast Guard acted in removing him as a seaman.

Other men have had similar experiences. In one instance, at least, a federal investigative officer threatened the man (before induction) with difficulties in his military career if he did not become an informant on his alleged associations. As the "G2 Summary of Information" (See below.) has become available for use in the defense it has become apparent that the investigation has long preceded induction in many cases. It is ironical that one of the few dates that appear on these "G2 Summaries" -- that of when the investigation began -- exposes the lack of candor with which the government has treated these men.

The nature of the allegations, particularly when they involve Communist Party membership over a period of time, or public attendance at meetings of "Attorney General's List" groups, often make it difficult to believe that the government did not have this information in its possession prior to induction of the man.

Yet, the regulations state that:

"if prior to induction investigation discloses significant information to indicate that induction and retention within the military service would be inconsistent with the interests of national security such induction will be held in abeyance and the provisions of (a) above apply." (Par. 15b)

This would seem to accord to known "anything else" the specific advantage given to "known Communists" by authorizing them to avoid both the obligation of military service and the subsequent stigma of an "Undesirable" discharge; for "a above" states:

"Known Communists will not be inducted into the Army Establishment. Upon receipt of credible derogatory information* or by the prospective inductee's own admission that he is a member of the Communist Party, his induction will be held in abeyance. . . . Induction of the registrant will not be made without prior approval of the Department of the Army." (Par. 15a)

Unfortunately both the Army and the men lose the advantage of this provision because the Army often has failed to avail itself of its requirement to secure the accomplishment of DD 98 prior to induction. ~~If it did so and explored the leads there indicated~~ it would have resulted in the rejection of many of these men.

The method of submitting the Loyalty Certificate for execution after induction has not always been conducive to either comprehension or full disclosure. It is a complicated form with extensive instructions, hundreds of organizations and many degrees of association spelled out in very small type. A full-scale reproduction is included in Appendix B. It has been submitted to the draftee anywhere from "several days" to "two weeks" after

*"Credible derogatory information means information received from any source, which evaluated in the light of all other available information, both favorable and unfavorable, indicates that the retention within the Army Establishment of the member concerned may not be, or is not, clearly consistent with the interests of national security." (Par. 2e)

induction and usually as a routine step in Army orientation. An officer has not always been present to explain it. The tendency has been to rush the man through with the statement, "if you aren't a Commie, sign it." Not only is this indicated in Cases 7, 8, 9, and 38 reported here, and in a large number of other cases reported to the writer, but it was specifically testified to by Military Defense Counsel, 1st Lt. _____, who took the stand as an expert witness in Case 10. He stated:

"I was inducted on the morning of _____, October. We didn't get to Camp _____, I'd say, until about 1 a.m. that night. . . . were thrown into a barracks, and I mean literally thrown into a barracks, and awakened the next morning at about 3:30 or 3:45, which for a former civilian was an ungodly hour, at that time. We were herded off like sheep into these lines where we were given these various papers and clothing, articles of clothing and we took a battery of tests. It was like an assembly line procedure. There were EM (enlisted men) at each point and they gave you papers to sign and I can say from my own experience that at that time, to me a Private-2 was God. It was my first experience with the Army and it was a complete period of harassment. I know I am a lawyer, I have a BA, MA and a LLB and I signed this DD Form 98 without looking at it. It was put in front of me and they said sign and the fear of God was put in me by these non-coms, and I signed."

It is little wonder that the inductee in Case 8 had no recollection of ever seeing the form until the morning of his hearing, over six months after he had completed his two years of active service.

A complicating factor was that, prior to February, 1954, the Attorney General's List of Subversive Organizations was on a separate form, DD 98A, while the degree of possible associations with them was on DD 98. The 98A list was not always available for inspection and the inductee had to guess and recall -- if he had time to do either.

In a few cases, the information volunteered on the Loyalty Certificate constituted the sole or primary allegations that were the basis for the ultimate less than "Honorable" discharge. Under such circumstances, the men in cases 3, 27, 34 and 49 should not have been inducted in the first place.

On April 7, 1954, the Army incorporated into its criteria for determining a "security-risk" the "pleading protection of the Fifth Amendment or of Article 31, Uniform Code of Military Justice, in refusing to completely answer questions contained in DD Forms 98, 390, or 398." (Department of Defense Directive No. 5210.9) Yet the Loyalty Certificate clearly advised the inductee of his right to so plead, gave him specific instructions as to how to do it, and did not advise him of the possible penalty for doing it. Some of the men who had previously claimed this "Federal Constitutional Privilege" were given a new opportunity to execute DD 98, ~~some were not.~~ Repeatedly, however, the charge of pleading it crops up in the Allegations.

These failures of the Army to abide by its own regulations have resulted in great inconvenience and expense to the Army. They have been permanently disastrous to many inductees.

C. Investigation and Flagging Action

"A registrant who refuses to accomplish the DD Form 98 in its entirety or who discloses significant derogatory information with respect to his background will be accepted into the service and, pending completion of a thorough investigation, be retained on specially controlled duties in the lowest enlisted pay grade permitted by law." (Par. 15b)

(In practice, as previously shown in all of the cases examined, he was already in service before he had an opportunity

to either "refuse" or "disclose.")

Specially controlled duties are the:

"...type of assignment which a member occupies while undergoing investigation to determine whether his retention is clearly consistent with the interests of national security...." (Par. 2d)

This is sufficiently vague to include Day Room Orderly (Case 35), Cellophane-Paster-On-Bulletins Orderly (Case 44) and similarly depressing assignments. Rarely does it include "Military Training" beyond "Basic."

"However, indefinite assignment to such a position in lieu of action under these or other administrative regulations is not authorized." (Par. 2d)

This means that both investigation and "flagging" action must be promptly instituted. The exact operation of the flagging action is set forth in SR 600-310-1 but this regulation is only available to "authorized" military personnel. In substance, ~~it provides that the man cannot be promoted; receive~~ an award, be transferred out of the Army district to which he is assigned, or be discharged pending the completion of the investigation.

A tab, or "flag" is put on his file so that nothing good can happen to him -- such as an Honorable discharge -- until the investigation is completed and final action taken. It cannot be put on and forgotten, however. It must be reviewed every three months to be sure that the man has not been "cleared" without word getting down to his Commanding Officer. It can be reinstituted at each quarterly inspection and can result in most or all of a man's "military training and service" being dissipated

in activities and in an atmosphere equivalent to a minimum detention prison. (See Cases 35, 44.)

The investigative procedure uses all the investigative agencies and can consider any other "credible derogatory information" available. An added fillip is that:

"It is the duty of every members of the Army Establishment to report to his commanding officer any information coming to his attention which indicates that retention of any member of the military service is not clearly consistent with the interests of the national security." (Par. 4)

The man being investigated is usually assigned to a "Holding" company where it is safe to assume that a fair proportion of his fellows are either Counter-Intelligence or Battery-Intelligence men. One amusing manifestation of this was in the case where the man's company commander in Basic training testified as a character witness at the hearing a year later. When asked, on cross-examination, how he remembered so well this particular man of all the hundreds that passed through his command, he said he had been ordered to observe him; so he had assigned his squad leader and the men who "slept to the right and left of him" to report everything he said and did. (He found "no indication of disloyalty.")

Usually, when a man is under investigation he is asked to execute Personal History Form DD 398. This gives a full summary of his life -- residences, schooling, organizations, employment, etc. Item 16 asks specifically concerning association with Communist organizations or "any organizations seeking

to alter the form of government by unconstitutional means. " Item 17 asks, "Are there any unfavorable incidents in your life...?" Refusal to answer or the claiming of the Constitutional privilege will constitute sufficient grounds in itself, to institute action. He is sometimes asked, on some pretext to execute a new DD 98. If there are variations in the answers new charges will be filed. (Case 28)

He is often called in for an interview and told that the interview is "Confidential" and that he cannot divulge that it has taken place. In Case 5, he was told that he was entitled to counsel at this undivulgable interview and that, therefore, Lieutenant _____, had been assigned to him as counsel.

An interesting aspect of the investigative procedure is the requirement that:

"A summary of information is not considered sufficient for the purposes of these regulations since the administrative procedures described herein are directed to the end of obtaining factual findings that the member under investigation is, or is not, a person whose continued service is clearly consistent with the interests of national security." (Par. 20)

While this is a highly commendable requirement, it does not appear to carry over to the rights of the inductee in obtaining information "sufficient for the purposes" of defense. This will be discussed in greater detail under G 2 Summary of Information and Hearings.

But all investigations must eventually end. Then come the allegations.

D. The Allegations

The allegations of "derogatory information" filed against inductees have run the full gamut from the expected "membership in the Communist Party" to remote degree of family relationship. Any association with one of the organizations listed by the Attorney General as "Subversive," however casual, will constitute an allegation. The organizations are by no means confined to the Attorney General's list, however. There have been included organizations which have been cited by the House Committee on Un-American Activities, the Special Committee on Un-American Activities, the California Committee on Un-American Activities, the Ohio Committee on Un-American Activities, etc.; organizations which are anonymously "reported" to have been dominated by members of listed organizations; and organizations which, as far as the allegation indicates, have been cited or reported by no one at all.

Virtually all of the allegations, excluding family relationships, pertain to pre-induction associations. Because of the youth of all of these men, most of the allegations concern activities of their mid or late teens, a high degree of them allegedly occurring before they were old enough to drive a car or publicly drink a beer in most states. In one instance, the alleged membership, if true, must have occurred when the inductee was eight years of age. Where the allegations concern members of the family they may refer to events of fifteen, twenty, or more years ago.

While the proscription of reading and the expression of opinion becomes more apparent with the examination of the hearings,

it often crops up in the allegations themselves. The official organs of listed organizations are automatically included. Unidentified Communist or "Communistic" publications are referred to. Leaflet distribution, endorsement of cause advertisements, "reported to have said," and "reported sympathy," have all constituted bases for allegations.

Other allegations are so ambiguous or vague as to be impossible of definition, let alone rebuttal. Where the information in the confidential file has become available for inspection in summary form, it has sometimes revealed that it does not support the allegation for which it is supposed to be the basis. Most curious of all, however, are those allegations which are factually false on their face.

Almost twice as many allegations were examined as the ones included in the ensuing classification. We have confined the analysis to the forty-nine cases reported in Appendix C so that each allegation can be examined in the context of the other allegations of a particular case. Unless one is to contend, however, that the whole may be greater than the sum of its parts, each allegation, like a count in an indictment, should be capable of standing alone. If it has no probative force in itself it cannot add probative force to others.

Classification of Allegations

(It should be reemphasized here that these are allegations only; their truth or falsity is not being considered.)

(In this classification, all time intervals after the allegation refer to the length of time prior to induction that the alleged act occurred; numbers in brackets refer to cases in Appendix C.)

A. Communist Party

11 Memberships

3 had some official duty, such as squad captain, fund solicitor, publication representative, educational speaker. (6, 26, 41.)

3 members within two years. (2, 26, 41.)

4 members three to five years before. (6, 30, 37.)

2 members five or more years before. (45, 46.)

2 not dates alleged

~~1 "You were a member" (47)~~

1 "You reportedly admitted that you were a Communist Party member." (22)

In Case 41 there was the additional allegation that, "You were believed to be a Communist."

1 Attended meeting of the Communist Party. (14)

B. Other Political Parties

1. Socialist Workers Party

5 Memberships

2 within two years. (20, 22.)

1 two to five years before. (6)

2 five or more years before. (3, 38.)

2 Attended meetings

1 "While on leave from the Army." (6)

1 "Admitted you attended the National Convention
in 1946 -- nine years before. (10)

2. Workers Party and Independent Socialist League

(The Workers Party was dissolved in 1948 and the same
group reconstituted itself as the Independent Socialist
League, which does not consider itself a political party.)

2 Membership - Workers Party. (3, 38)

3 Membership - Independent Socialist League.
All within two years. (7, 8, 34.)

1 "Closely associated" - Independent Socialist League.
No date specified. (33)

1 "Attended meetings" - Independent Socialist League. (6)

3. Nationalist Party of Puerto Rico

1. "Reported to have been sympathetic to" - three years
before. (37)

4. Independent Progressive Party (of California)*

1 Member - over five years before. (37)

1 Registered with - over five years before. (28)

1 Signed a petition and registered to vote - within two years. (29)

1 Campaigned for - over five years before. (28)

1 Member of Independent Progressive Party Club at College -
over two years before. (41)

- See also Young Progressives of America (D 4a, below).

5. Progressive Party of Missouri

("reported to have been under the complete domination and
control of the Communist Party.")

1 Member - within two years. (14)

* All of the preceding political groups have been listed by the
Attorney General of the United States as "Subversive Organiza-
tions." The Independent Progressive Party has been cited by
the California Committee on Un-American Activities as "a
Communist dominated" organization.

6. American Labor Party

("cited by House Committee on Un-American Activities as being under Communist control in New York City.")

1 Member - within two years before. (13)

C. Attorney General's "List of Subversive Organizations"

1. American Committee for the Protection of the Foreign Born

1 Name on the records - over two years before. (32)

1 Attended a meeting - over five years before. (6)

2. Arts, Sciences and Professions,----- Committee for

1 Attended meeting - within two years. (41)

3. American Youth for Democracy

2 Members - over three years before. (2, 37.)

5 Members - over five years before. (27, 28, 30, 43, 49.)

2 "Admitted membership" - seven and eight years before. (3, 34)

1 Vice-president of high school chapter. (49)

2 Members - no date given. (46, 48)

1 "Applied for membership - seven years before. (41)

4. California Emergency Defense Committee

1 Attended a meeting sponsored by - two years before. (30)

5. California Labor School

1 Attended - over two years before. (2)

1 Registered at - over four years before. (17)

1 "Were affiliated with" - over four years before. (30)

6. Civil Rights Congress

3 Members - two and four years before. (4, 30, 36.)

1 Attended a meeting - over five years before. (6)

1 Attended a rally - two years before. (14)

- 1 Participated in picket lines sponsored by - one, five, and twelve years before. (14)
- 1 Sponsored an advertisement appearing in its paper - two years before. (19)
- 1 Name appeared on mailing list - thirteen years before. (43)

7. Jefferson School of Social Science

- 1 Attended - seven years before. (49)

8. International Workers Order

- 2 Members - one and three years before. (2, 16).
- 1 Applied for membership - five years before. (41)

9. Jewish Peoples Fraternal Order

- 1 Member - four years before. (27)

10. Labor Youth League

- 2 Members - within two years. (2, 30.)
- 2 Members - two to five years before. (17, 41.)
- 2 Members - over five years before. (37, 47)
- 4 Members - no date alleged. (8, 14, 48.)
- 2 "Reported to be a member" - two to five years before. (41, 45.)
- 1 "Reported to be a member" - no date alleged. (49)
- 1 Listed among the organizing committee for a demonstration, - four years before. (17)
- 1 Attended meetings - after induction. (19)
- 1 Attended meetings - within two years. (29)
- 1 Attended meetings - over five years before. (6)
- 1 Subscribed to paper - no date. (42)

11. Nature Friends of America

- 1 Associated with - over two years before. (23)

12. Oklahoma Committee to Defend Political Prisoners

1 Claimed membership in - over two years before. (11)

13. Socialist Youth League

(Youth division of the Independent Socialist League)

4 Members - over two years before. (3, 8, 33, 34.)

1 "Actively affiliated with" - over two years before. (7)

14. Young Communist League

1 "Reported to be a member" (49)

(This organization was dissolved when inductee was eight years old.)

D. Other Organizations

1. Cited by House Committee on Un-American Activities

a. American Peace Crusade (later listed by Attorney General)

1 Attended functions - within two years. (30)

1 Participated in parade - within two years. (14)

1 "Were a Communist Party delegate to" - within two years. (47)

b. National Labor Conference for Peace

1 Attended - over four years before. (36)

2. Cited by Special Committee on Un-American Activities

World Federation of Democratic Youth

1 Corresponded with (11)

3. Cited by California Committee on Un-American Activities

a. Four Continent Book Corporation

1 Corresponded with (11)

b. Independent Progressive Party (see B 4, above)

4. Anonymously "reported" organizations

a. Young Progressives of America

("reliably reported to be a 'training ground for embryo Communists. '"')

1 Member - over four years before. (49)

b. Jewish Young Fraternalists

("reported to be a youth section of the International Workers Order. ")

1 Attended national convention - over four years before. (16)

c. ----- Chinese American Youth League

("reportedly promotes activities and policies indicating sympathy with the Chinese Communist government and the Soviet Union. ")

1 Member (21)

d. Youth for Civil Rights Conference

("Several Communist front organizations were represented at this meeting. ")

1 attended - within two years. (2)

e. Politics Club

~~("reported to have been formed by the Workers Party and the Socialist Workers Party. The Socialist Workers Party is cited by the Attorney General of the United States as a subversive and Communist organization and the Workers Party is cited by the Attorney General of the United States as subversive. ")~~

1 Member - more than two years before. (7)

f. ----- Urban League

("reported to be a subversive organization")

1 Employed by - over three years before. (13)

4. Unidentified organizations

a. National Lawyers Guild

1 Member - within two years. (37)

b. Negro Labor Council

1 Member - within two years. (30)

c. Third World Festival of Youth and Students for Peace

1 Delegate - over two years before. (41)

d. "An organization which closely follows the Communist Party Line."

1 Attended a meeting - within two years. (12)

e. "An organization infiltrated and dominated by members of the Communist Party."

1 "Served in an official capacity" - within two years. (2)

E. Publications

1. The Daily Worker

("described as the chief journalistic organ of the Communist Party by the Attorney General of the United States.")

1 Subscribed - within two years. (4)

1 Subscribed - no date alleged. (36)

1 Sold - (26)

2. The Worker

("the Sunday edition of the Daily Worker, an East Coast Communist daily newspaper.")

1 Received - within two years. (23)

3. The Daily Peoples World

("cited as an official organ of the Communist Party on the West Coast by the Special Committee on Un-American Activities.")

2 Subscribed - within two years. (17, 41.)

3 Subscribed - two to five years before. (6, 30, 37.)

1 Received - within two years. (42)

1 Received favorable publicity in - within two years. (2)

1 Was observed entering a meeting sponsored by - within two years. (41)

1 Attended meetings sponsored by ("accompanied by your wife") - within two years. (29)

4. New Challenge

("published by the Labor Youth League.")

1 "Reported as having been a subscriber to" - no date. (42)

5. The Militant

("staffed and operated by the members of the Socialist Workers Party.")

1 Distributed - two to five years before. (10)

1 Subscribed - two to five years before. (7)

6. Labor Action

("cited by the Attorney General of the United States as the official organ of the Independent Socialist League.")

2 Subscribed - within two years. (7, 34)

1 "Was reported to be on the mailing list of" - two to five years before. (3)

7. Monthly Review

(erroneously described as "a magazine published by the Independent Socialist League.")

1 Distributed - two to five years before. (6)

F. Personal Activities

1. Demonstrating, Petitioning, Literature Distribution

2 Participated in picket lines

1 Sponsored by the Civil Rights Congress - two years before. (19)

1 "Protesting the trial of Communist Party leaders" - over four years before. (36)

1 Participated in a parade sponsored by the American Peace Crusade - over two years before. (14)

2 Signed petitions

- 1 for the Communist Party - within two years. (23)
- 1 for the Independent Progressive Party - over two years before. (29)

3 Distributed literature

- 1 "Communist Party literature" - within two years. (26)
- 1 "Reported to have attempted to convert children of your neighborhood to Communism through distribution of Communistic literature and through teaching Communist theory and doctrine" - No date. (40)
- 1 Passed out handbills - within two years. (36)
 - "believed to be backed by a Communist organization."
 - "denouncing the House Committee on Un-American Activities."
- 1 Rented a truck "from which Communist literature was distributed" - over five years before. (41)

2. Reading

- 1 Was "an ardent reader of Marx and Engels" - no date. (41)
- 1 "Carried Russian publications to college classes" - no date. (40)

3. Writing

- 1 "Wrote articles for a student publication which follows the Communist Party line" - within two years. (41)
- 1 "Wrote a number of articles for a newspaper published by the Independent Socialist League" - no date. *8)
- 1 "While in high school. . ." - no date. (40)
 - "wrote a biography of Lenin in which you extolled the efforts of Lenin and Stalin."
 - "wrote an examination paper on your dislike of capitalism which you said was called Democracy to make it sound rosy."

3 Corresponded

- 1 "With known Communists - within two years. (30)
- 1 "With an active member of the Communist Party" - within two years. (43)
- 1 "Carried on an extensive correspondence over an

extended period of time with individuals and organizations in numerous foreign countries, including the USSR and its satellites." (11)

- 1 "Sent birthday greetings and communications to Eugene Dennis, National Secretary, Communist Party, USA." - four years before. (41)
- 1 "Continue to correspond with (your mother), a reported Communist Party member." (49)
- 1 Wrote "along with your mother and brother... a letter to radio station _____ protesting the cancellation of commentator _____, a well-known Communist fronter." - over two years before. (32)

4. Speaking - (No dates are given in any case)

- 1 "Made statements which indicate that you are sympathetic with Communism." (21)
- 1 Was "reported to have advocated the principles of Communism." (40)
- 1 Was "reportedly sympathetic with Russian and Communist points of view." (22)
- 1 "Supported a witness in his defying the _____ State senatorial committee hearings on Communist infiltration in the schools." (48)
- 1 Was "~~reliably reported to have indicated that he was being~~ cautious in his Communist Party activities until he received a discharge from the Marine Corps." (4)
- 1 "Consider your father's political views sensible and intend to go along with them, although you deny that your parents are or ever were Communists." (40)
- 1 "Solicited funds for defense of persons under... Smith Act." (13)

5. Keeping Addresses

- 1 "listed in your notebook the names of eight individuals, all of whom have subversive backgrounds." - no date. (19)
- 1 "Maintained an address book in which are listed the names of ten individuals associated with Communist or Communist front organizations, or who were subscribers to Communist publications." - no date. (15)

6. Working

- 1 Worked on a Communist Collective Farm in Israel. (11)
- 2 Was "employed at Camp _____, which is reported to be a Communist Party Camp" - over two years before. (13, 16.)
- 1 Was screened off a ship as a poor security risk - over two years before. (10)

7. Giving character references

(No dates, names or places were given except for the person's name in the two cases indicated.)

- 1 "Individual, whose wife, in _____, was a member of Communist Party." (39)
 - 2 Individual "associated with Communist front groups." (33, 42)
 - 1 Three individuals "associated with or in sympathy with Communist or Communist front organizations." (15)
 - 1 Individual "associated with Communist organizations." (39)
 - 1 _____, who "appeared on the records of the Civil Rights Congress" and "in (over ten years before induction) attended functions sponsored by the _____ Committee of the Communist Party." (41)
-
- 1 _____, who "was listed as a paid up member" and "appeared on the mailing list of" (in different years) the _____ Committee for the Arts, Sciences and Professions. " (41)

8. Associating

- 2 Associated with known Communists - over four years. (17, 45)
- 3 Associated with known Communist and Communist sympathizers - no dates given. (12, 22, 36.)
- 1 Associated with an individual who "associated with known Communist sympathizers," was an "active member of American Youth for Democracy" (over six years before induction), was "active in the Labor Youth League" (over four years before induction), and "was reported to be active in Communist Party activities" (over two years before induction). - no date given. (36)

- 1 "Resided with an officer of the Socialist League" (This organization is unidentifiable.) - no date given. (7)

See also: Corresponded, under F 3. Writing, above.

9. Executing Loyalty Certificates

(The Loyalty Certificate DD 98 states: "If Federal Constitutional privilege against self-crimination... is claimed about all or any part..., you may so claim under Remarks below....")

- 6 "Claimed the Federal Constitutional Privilege".
(19, 20, 30, 37, 42, 46.)

- 1 Refused to sign, declining to claim the privilege, "stating you did not believe in loyalty oaths as such." (29)

- 1 Refused to sign, noting "I don't want to sign this section because I consider it unreasonable." (39)

- 4 Refused to sign. (32, 41, 43, 45.)

- 1 "Indicated that for three or four months (six years before induction) you had attended social meetings sponsored by the American Youth for Democracy and Jewish Young Fraternalists." (27)

- 1 "Falsified... by signing in the negative without qualification inasmuch you admitted under item 16 of the Personal History Form... that you had been a member of American Youth for Democracy." (28)

- 2 Refused to answer Item 16, Personal History form. (37, 46)

10. Miscellaneous

- 1 Visited Soviet Embassy on several occasions - no dates given. (11)

- 1 Allegation is too vague to answer;
"You were for four years a member of the Trotskyist (Communist) Movement." (38)

- 1 Allegation is patently impossible:
"You knew that the Socialist Workers Party was an organization that had been cited as subversive by the Attorney General of the United States, at the time of your attendance at the National Convention." (This, as indicated in the preceding allegation in this case, was in 1946, over a year and half before the Attorney General's list was promulgated.) (10)

- 1 Was "reported to have Communistic tendencies." (49)

G. Family Relationships

Many inductees have relatives. These have managed to get charged with all sorts of activities and associations. Only the more startling are summarized here but all the relatives are listed, with reference to the cases in which they appear.

The most fascinating allegation of all is:

"You have a father who is reported to have said that if Communism offered anything good he would accept it." (1)

- 1 Grandmother "was represented in the Communist Party papers as 'fanatically devoted to the Soviet Union and Communism'". (28)
 - 1 Grandfather "attended meetings of the Communist Party." (8)
 - 1 Parents "once prominent in the Young Communist League." (8)
 - 1 Parents "were members of the Communist Party." (23)
 - 11 Mothers (14, 16, 18, 28, 32, 40, 43, 45, 46, 48, 49.)
 - All, except 18, 32 and 48, were charged with being Communist Party members at one time or another.
-
- (48) Signed a Communist Party petition in (the 1930's), and "has been a member of pro-Communist organizations." No dates given.
 - (32) Was listed on the records, at varying times, of Attorney General's List organizations and "in _____ was reported to be residing with a sister who is a well-known Communist."
 - (18) "Having solicited her sister to join the Communist Party" but she is not charged with being a member herself and "is reported to be a dominating influence over other members of the family."
- 3 Step-mothers were members of the Communist Party. (13, 17, 42.)
 - 10 Fathers (1, 13, 14, 16, 18, 32, 34, 40, 42, 46, 48.)
 - All, except (1, 18, 32 and 34), are charged with Communist Party membership at varying periods.
- (1) "Reported to have said..." - see above.
 - (32) Was a member of the International Workers Order - no date given.

(34) "Was listed as a subscriber in _____ to the Labor Herald, a publication cited as the official organ of the Communist Trade Union Educational League by the California Committee on Un-American Activities.

(18) Supported many (enumerated) Communist causes.

5 Brothers

2 Communist Party members. (28, 45.)

1 Member of American Youth for Democracy. (17)

1 "Discharged from the United States Army under AR 615-370." (Disloyal or Subversive) (30)

1 Was "reported to have been the signer of a handbill distributed by ... Civil Rights Congress pickets" and, along with the inductee and his mother, "wrote a letter to radio station _____ protesting the cancellation of commentator _____, a well-known Communist fronter." (32)

2 Sisters

1 Member of the Communist Party. (48)

1 Affiliated with Communist organizations. (18)

8 Wives

1 Member of the Socialist Workers Party. (20)

2 Members of Labor Youth League. (17, 29)

1 Member of the Civil Rights Congress. (36)

2 Members of the Socialist Youth League (7, 33)

1 Member of the Independent Socialist League, "whose address book contained the names of several known members of the Communist Party, and whose apartment contained numerous communist publications including the Communist Manifesto." (8)

1 "Who has indicated that she is sympathetic to Communism." (21)

1 Mother-in-law was "a local official of the Communist Party." (17)

1 Father-in-law was "a member of the Communist Party." (17)

1 Sister-in-law "is a self-admitted Communist." (21)

1 Brother-in-law was "affiliated with Communist organizations." (18)

* * * * *

E. Answers and Hearing

Answers

Prior to April, 1954, all defense or rebuttal to the allegations was by written answer. No hearing of any kind was accorded the inductee. Originally thirty days were allowed in which to file the answer, with an extension granted in case of need. (Case 7.) In the early Spring, 1954, this was shortened to seven days with no extension permitted.

Even with thirty days, it was difficult for a man on active duty, particularly if overseas, to accumulate the necessary documentation to support his answers. Yet in the cases examined there was a higher rate of clearances than subsequently and, in the same period, "Honorable" discharges were awarded if the "character of the service rendered" warranted even though the Army did not choose to retain the man until the expiration of his term of service.

Coincident with the Senate Armed Services Committee's hearings in Washington, the regulations were tightened not only in terms of the type of discharge but by curtailing the opportunity of the inductee to adequately reply to the allegations. With seven days to answer, few could do more than pit their own written word against the unrevealed "information" in the Confidential file. In Korea, one man found that he could not even see the applicable regulations. He was told that if any one of the allegations was true it didn't make any difference whether he answered or not. He didn't; and received an "Undesirable" discharge. (Case 6.)

At that time, there was a curious failure of communication within the Army. Department of Defense Directive 5210.9, April 7, 1954, provided that the man "will be afforded an opportunity upon request to present any cause why he should not be so separated" before "a board of officers." Yet in Cases 6 and 38 in April and in Case 17 in May, the men were denied the right of hearing. In mid-June, the writer participated as civilian counsel in a case where the Post Judge Advocate's office did not have a copy of the Directive (which had just been revised). It took over two hours to produce one for inspection (reportedly from the Post Commander's office).

In this same period, persons who, with some justification, assumed that they had been at least partially cleared on their written answers found that the rules had been changed. They had received letters earlier informing them that:

~~"You will be retained in the service at your present grade, you will not be promoted, and upon the end of your term of service you will be discharged with the type of discharge appropriate to the character of the service you have rendered as of the date you are eligible for separation."~~

Some received an "Undesirable" discharge without further notice, others were notified by the Adjutant General that:

"Letter of _____ will no longer apply. (You) will be discharged under AR 615-370. (You) will be given an Undesirable discharge."

See Cases 7 and 13.*

Widespread protest over this high-handed procedure, precipitated the adoption of specific procedures for hearings under SR 600-220-1 on June 19, 1955.

* AR 615-370 which was entitled "Disloyal or Subversive", has been superceded by an amendment to SR 600-220-1.

Pre-Hearing Motions

Defense counsel, both civilian and military, have found themselves severely handicapped in preparation for the hearing because of the vagueness of many of the allegations and the universal failure to relate them to the character of the service rendered.

A number of these attorneys have made motions, demands, or requests for "Particulars." Generally such motions have been ignored. Occasionally the Army has replied that the purpose of the hearing is to give "the Individual Concerned an opportunity to show cause why he should not be eliminated from the Armed Forces in the interests of national security" and that no further specifications can be given. (See Notice of Hearing, below.)

Other motions have been made to delete specific allegations on the basis that they are inapplicable, not brought within the criteria of the regulations, inherently impossible, ambiguous, too vague to rebut, or otherwise legally improper. With one exception in the examined cases these motions have been denied; usually ignored.

In Case 33 the charges primarily involved alleged association with the Socialist Youth League and the Independent Socialist League, organizations cited by the Attorney General as subversive. In advance of the hearing, counsel moved that these allegations be deleted on the following grounds:

- "a. Neither the Socialist Youth League nor the Independent Socialist League had been validly listed by the Attorney General in that no hearing had been accorded them as required by law. *
- "b. The Attorney General had notified these organizations that a hearing would be accorded them and their attorney had requested that this hearing be set for _____.
- "c. It is improper for the Department of the Army to continue to consider such alleged membership or association as "derogatory information" pending this determination by the Attorney General. "

No formal notice of the receipt of the motions was made until the day before the scheduled hearing when the individual was informed that in view of the motions concerning allegations (a), (b) and (c), the hearing was being postponed pending "further determination of the Secretary of the Army. " This hearing has been rescheduled for early August, 1955, but no formal determination has been made by the Secretary.

At the beginning of 1955, the "G2 Summary" became available to the defense.

G2 Summary of Information

The "G2 Summary of Information" purports to be a summary of all of the material in the "Confidential" file which is pertinent to the Allegations. (As will be seen under Hearing, this is not always true.) It gives a summary of the man's educational and vocational experience, his military career, the period of investigation, and the "information revealed" by the investigation.

* The Attorney General began hearings to determine the validity of the listing of this organization on July 18, 1955. This hearing has not been concluded. This is the first hearing accorded any organization on the list, although a number of them have requested one and their right thereto was upheld in Joint Anti-Fascist Refugee Committee v. McGrath over two years ago.

It is replete with "one informant stated," "an informant reported," "was reported to be," etc. Specific dates are rarely given. There is a printed code for evaluation of the information ranging from "completely reliable" through "unreliable" to "unknown" for the source; and from "confirmed by other sources" through "improbable" to "truth cannot be judged" for the information. This code was not used, however, in the G2 Summaries examined by the writer. In any event, it would be interesting to hear the government's justification for submitting to a Field Board as evidence "improbable information from an unreliable source."

The investigative agencies disclaim any responsibility or intent to evaluate the information received. Yet they do; at least unconsciously. If the investigator acquires the information that someone prefers green ties with brown suits it is unlikely to go into the files. If he acquires information that sounds political, it goes in; sometimes with mystifying results.

Consider this bit of gibberish from a "G2 Summary":

"One of SUBJECT'S former associates stated that _____ ... had intimated... that the Soviet Union had gotten a dirty deal out of the Yalta Agreement"

Now, this sounds significant to the field of investigation and it certainly is political. The only thing wrong with it is that it doesn't make sense. Neither the Communists nor any other political group has ever claimed that Yalta was a "dirty deal" for the Soviet Union. Quite the reverse! If the man

intimated any such thing it could only tend to show that he is a political illiterate. Yet such "information" is supplied to the Field Board for consideration.

In another case the "G2 Summary" states:

"SUBJECT has a mother-in-law, Mrs. _____, nee _____, who was reported to have been 'lying low as a Communist for a long time' and was supposed to become active in the peace movement again. "

Without considering the probative value of such information or expecting the investigator to evaluate it, one is justified in suggesting that simple fairness would require that the summary include the easily verifiable information that the alleged mother-in-law died in 1940, when the inductee was ten years old and ten years before he had met the girl he married.

Before the summary became available, it would never have occurred to the inductee or his counsel that it was necessary to offer evidence in refutation of such balderdash because he could not have known that the Board was considering it. How much similar material remains in the Confidential file before the Board can only be guessed at with a shudder. That some does is evident from questions asked by Board members on cross-examination at the Hearing.

The government has been chary about making this summary available and in permitting its use even in the hearing itself.

Stamped on each copy until recently was the statement:

"This document contains information affecting the national defense of the United States within the meaning of the Espionage Laws, (Title 18, U.S.C., Sections 793 and 794). The transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law."

The sections referred to of the Espionage Law are set forth in Appendix B 3 (p. xv.) It is extremely unlikely that the "National Defense" would be affected by the widespread publication of these Summaries in toto. What is more likely to be affected is the public esteem for the validity of the government's investigative technique. The writer has assiduously avoided quoting anything which would remotely affect the National Defense.

The G2 Summary became available to the defense around the beginning of January, 1955. At first it was only available for inspection during the course of the hearing, when it was too late to prepare any defense - other than the inductee's own testimony - to the "Information" it contained. Counsel was not permitted to make notes and all reference to it, even the arguments against its validity, were deleted from the transcript of the hearing with which the defense must work if it chooses to submit a Memorandum or brief on review.

Later, the G2 Summary was available for inspection at the military post in advance of the hearing but no reference to its specific contents could be made during the course of the hearing. In April, the writer was forced, in direct examination, to refer to the summary by paragraph number and have the witness answer in general terms, under threat of having the entire Record of the Hearing classified. By June, 1955, it was possible to read directly from it and have it appear verbatim in the unclassified transcript.

Beginning in July, 1955, the G 2 Summary was supplied

to the inductee along with the letter of allegations, which contained the following statement:

"The summary of Information, attached hereto, is furnished for your information and is marked "FOR OFFICIAL USE ONLY" solely for your protection. This notation in no way limits your use of this document but is intended to insure that the contents thereof are not unnecessarily divulged without your consent. "

The making of the G 2 Summary available without restriction and permitting free quotation from it at the hearing has not noticeably affected the "National Defense." At the same time it has not contributed materially to the fairness of the hearing. It continues to contain a large amount of extraneous, anonymous, unevaluated "information." This alleged information, in effect, constitutes new and additional charges which the defense must answer even though they are not set forth in the letter of allegations.

Notice of Hearing

The first official notification to the inductee that he is under investigation is usually the receipt of the Letter of Allegations. This letter states:

"1. The following allegations are on file in the Department of the Army:

.

"2. Under the provisions of Special Regulations 600-220-1, Subject: 'Military Personnel Security Program', dated _____, copy of which is available in your Military District, you are required to elect in writing, to the chief of your Military District, one or more of the choices offered below:

a. Submit a request within five (5) days of receipt of this letter for a personal appearance hearing before a "Field Board"

with or without counsel. Your appearance must be at your own expense and not at the expense of the Government.

b. In lieu of appearance before a board, submit a letter of rebuttal together with such supporting documents as you desire, within fifteen (15) days of receipt of this letter. However, you are advised, in the event you do not elect a personal appearance hearing before a "Field Board", subsequent action under these regulations could result in your separation under other than honorable conditions, or

c. Request retirement, if eligible, or discharge within five (5) days of receipt of this letter. In the event you request discharge, your letter will include a statement that you agree to accept an undesirable discharge. Final decision as to type of discharge to be awarded rests with the Department of the Army. (See sample form letter attached.)

"3. In the event you elect to appear before a "Field Board", the Commanding General, First Army, will appoint a board of officers to consider your case. (Emphasis supplied.)

Nowhere in this letter or in SR 600-220-1 is the man
~~informed of his own or the Field Board's responsibilities in~~

considering his case other than that the Board must make a finding which:

"will include a determination with respect to each of the allegations set forth in the 'Letter of Allegations' and an analysis of information and a detailed statement of reasoning upon which each finding is based. "

In particular, he is not informed that the burden of proof will be on him. If he asks for a hearing, he is entitled to at least ten days notice and usually, but not always, gets it. This notice states:

"1. You are hereby directed to attend a hearing of the Field Board of Inquiry...and show cause why you should not be eliminated from the Army

on the following grounds alleged against you under paragraph 11b, SR 6001220-1: (Allegations). " (Emphasis supplied.)

At the time when the inductee is offered the election, he is entitled to be properly apprized of the purpose of the hearing so that he may make an aware decision. To be so informed after he has elected the hearing is to put him in a position where invidious implications are likely to be drawn from a determination at that time to forego the hearing. It also has the effect of depriving him of his right to rebut in writing within fifteen days of receipt of the letter of allegations.

Hearing

(The legal arguments raised repeatedly against the validity of the hearings based on the allegations in most of the examined cases and against the manner in which hearings are conducted will be presented in a subsequent chapter. This ~~section is confined to the actual operation of the board~~ hearings within the framework of existing regulations.)

The nature of a hearing in any security case - military or otherwise - always comes as a shock. To the man the outcome is a matter of vital concern for he well knows it will effect his entire future. Procedurally, however, an inductee usually has been sufficiently conditioned to the military approach not to be fully aware of the Star Chamber anachronism of what is happening to him.

To his lawyer, however, the procedure is usually a nightmarish negation of his training and experience. In interviewing these attorneys and in reading the Records one finds,

over and over again, a sense of personal outrage at this professional indignity.* Let us review what takes place.

The Field Board of inquiry is composed of at least (and usually not more than) three field-grade or general officers and one or more recorders, who are the prosecuting officers. Its authority and procedures are controlled by SR 600-220-1 (par. 30), and the applicable provisions of SR 15-20-1 and SR 605-200-1.

The hearings are closed. One or more stenographic reporters and occasionally tape or other electronic - recording technicians are present. No spectators are admitted even when requested by the defense. The inductee, who is called the "Individual Concerned," his assigned military defense counsel, and civilian counsel, if any, are the only other persons present at the open meetings of the board. Who ~~is present at the closed sessions is unknown although no one~~

~~except board members are supposed to be.~~ (One hearing was invalidated because the record showed that the Recorder was present at the closed sessions which made the final determination of the Field Board.) The hearing is behind double

* A surprisingly large number of the attorneys involved undertook these cases without fee. Even those who were paid found, in many cases, that their compensation bore little relationship to the time spent. The successful defense of a security case involves a detailed and documented affirmation of a person's entire life -- and, sometimes, the lives of his entire family -- rather than the raising of a reasonable doubt of the commission of a particular act at a particular time and place. A word of special appreciation should be said for those few assigned military defense counsel who went far beyond their military duties, at what at times seemed an endangerment of their careers, in the preparation and presentation of the defense. Unfortunately, they must remain anonymous in this report.

locked-doors with every effort to preserve secrecy regardless of the desires of the defense.

The writer's experience has been that whenever the hearings are "closed" to consider a motion or to reach a decision on the evidence presented, the defense goes out a door which is locked behind it. The Recorder if he leaves the room at all must do it by another door. When the session is re-opened and the defense re-admitted the Recorder - the prosecuting officer - is always there. The decision, if it is on a motion, is usually announced by the President but with occasional promptings and amplification by the Recorder.

The records of the hearings and personal observation show that the Recorder plays the dual role of prosecutor and guide to the "judges." The government's case, in its initial stages is by written script; set answers given to set statements-made-by-the-Recorder. The President of the Board invariably states:

"The recorder, in lieu of and under the direction and supervision of myself as President of the Board, will now proceed with the presentation of the evidence on behalf of the Government." (Emphasis supplied.)

In reality, the President seems more often to be under the direction and supervision of the Recorder. But it really does not make much difference. If it is the judge's job to present the evidence on behalf of the Government, it makes no difference whether he delegates his authority to a prosecuting officer or not, or who is under whose direction.

In any event, the nature of the Government's evidence

is such that it is never really introduced at all. The Government's entire case consists of the introduction of the orders establishing and convening the Board, the Letter of Allegations, and the Notice of the Hearing. That's all.

Until recently, the "Confidential" file was formally introduced in a sealed envelope, unavailable to the defense for inspection.

SR 605-200-1, par. 5 (2), states that the defense:

"Will be afforded free access to all available open records concerning his service and allegations against him and to any confidential records considered by the commander or the board, except that if such confidential records include evidence or information, the disclosure of which might prejudice the sources from which the evidence was obtained or the safety or interest of the United States Government, the exact nature of such information or evidence and the method by or sources from which it was obtained will not be disclosed, without specific authorization of the Assistant Chief of Staff, G2, U.S. Army."

On the basis of this, some lawyers moved that the matter be referred back to Assistant Chief of Staff G2 for further information and, out of such motions, eventually came the G2 Summary. No motions concerning the inadmissibility of the "Confidential file" have ever been granted. (See Chapter IV).

In some of the current cases (May and June, 1955) the play-act formality of introducing this file has been done away with so that, as far as the record shows, there is absolutely no evidence whatsoever before the Board.

Par. 10, of SR 15-20-1, states that there shall be "a general observance of the spirit" of a long list of enumerated rules which are most of the standard rules of evidence in

criminal proceedings, including (a) Materiality and Relevancy, (b) Presumptions, (c) Hearsay rule, . . . (g) Judicial Notice, (h) Competency.

While most Boards have attempted to abide by these rules in open session, it is peculiarly difficult for them to do so in view of the nature of the Allegations, the disregard of them by the government in presenting its case, and the high degree of subjective testimony presented as evidence both in the "Confidential" file of the government and by the witnesses and affidavits presented by the defense.

It sometimes seems that "anything goes" in the cross-examination of witnesses. The Board by no means confines itself to the specific Allegations. An inductee must not only rebut them but, if he hopes to get cleared, everything "reported" in the G2 Summary of Information plus anything else that he and his counsel surmise from the tenor of the questions might be in the Confidential file.

In Case 23, the President of the Board stated:

"The board has evidence which was used as the basis for the letter of allegations. The board will not make its decision or form an opinion in this case until the respondent has had an opportunity to reply to the allegations and also to prove his case that he is not now a Communist or subject to any actions by the Government. (Emphasis supplied.)

There had never been an allegation that this man was a Communist but there was one that his parents had been. The Board was not officially convened to give him a chance to "prove his case that he is not. . . subject to any actions by the Government" but only to prove that he was not subject to certain specific

actions by the Department of the Army in respect to certain specific allegations.

Rarely does a Board speak as candidly as this President. Yet this, in practice, is what all Security Boards are doing.

With this introduction or failure to introduce the "Confidential" file, the government's case is now complete.

The defense usually opens with a reiteration of the legal arguments against the validity of the allegations and the entire proceedings. If counsel is willing to proceed after all his objections have been overruled, witnesses may be presented to testify to the man's general reputation for loyalty and high character and to the character of the service he has rendered in the Army. His service record is presented and is before the Board but the Personal file is not permitted to be formally presented into evidence. (It is treated as though it is already in evidence.)

Character witnesses, particularly if they are military personnel, are often treated with suspicion -- sometimes open hostility -- by Board members. Over and over again, the witness has found himself on the defensive in answering such questions as these:

"What do you think causes wars?"

"Do you think co-existence is possible?"

"What is your political party?"

Too often, the level of impersonality and objectivity can be summed up in the following exchange in discussing pri-

soners of war in Korea (Case 30):

Witness: We talked about it a little bit, wondering why some of the guys wanted to stay over there since this is such a nice peace loving country. We felt that Red propaganda had a lot to do with it. They were depressed, lonely, hungry, beaten, subject to any kind of punishment. Of course you don't have a clear mind to think with.

President: At Valley Forge that didn't bother them very much did it?

Witness: Pardon, Sir?

President: At Valley Forge that didn't bother them very much did it? Of course they died from it.

Member of Board: Have you discussed germ warfare in Korea?

Witness: No sir, not too much.

Member: Not too much? Did Private _____ ever discuss whether he believed the United States ever participated in germ warfare or not? What do you believe?

Witness: It seems to me that Private _____ - - -

(Defense counsel objects to question on ground that it is enough to try one man without trying the witness's beliefs at the same time. This objection is overruled.)

Witness: Private _____ didn't believe that they did.

At the beginning of the hearing, the inductee is told:

"You may testify in person or elect to remain silent; but should you elect to testify in person, you may be required to submit to examination by the board as to any matters concerning which you have testified."

If he does testify, he is asked:

"Do you understand your rights under the 31st Article of the Uniform Code of Military Justice and the Fifth Amendment to the Constitution of the United States?"

The 31st Article is restated verbatim in SR 15-20-1, par. 14, as follows:

"No witness shall be compelled to incriminate himself as to answer any question the answer to which might tend to incriminate him, or to make a statement or produce evidence of the statement as evi-

dence if not material to the issue and might tend to degrade him."

If, however, the inductee, during the course of his testimony, does claim this right, the very fact that he claimed it may constitute an additional allegation against him.

Space does not permit a detailed analysis of the questions asked the inductee by the Board. A high percentage of them have no apparent relationship to the allegations. Even when the charges do not include family relationships, the inductee sometimes is probed about adolescent quarrels with his parents and other intimate details of family life. These and other extraneous questions indicate that Board members have information not directly relevant to the allegations and not contained in the G2 Summary. Not all of it is pertinent, but how can the defense know what must and what need not be rebutted or explained if it does not know what the information is?

A final alarming tendency is detected in the Board's questions. The Army seems afraid of books and reading. Repeatedly, witnesses are asked: "Does he read?", "Does he do much reading?", "What books does he read?" Music and Art also arouse suspicious concern, until we reach this stage:

Q. "What do you mean an intellectual? Does that mean you question our present way of living and our present Government? Is that what you mean by an intellectual? In other words, you don't accept for face value. Is that what you mean?"

A. "An intellectual is a person who questions everything, even his fact of living, the factor that he even exists. He is more on a philosophical level than political level."

Q "Does it mean that you consider our form of Government open to question, and you're not too firm about defending our form of Government?"

A. "No, it doesn't mean that. I'm very firm about defending our form of government. It doesn't mean that at all."

Q. "You're loyal to our form of Government?"

A. "Yes, sir."

Q. "You are intellectual up to that degree?"

A. "Well, looking back on my adolescent experiences, I can laugh with you."

F. Findings, Determinations, and Review

Prior to November, 1954, the Field Board of Inquiry publicly announced its decision after voting in executive session. This decision consisted of a finding of fact concerning each allegation; and a recommendation based thereon. The recommendation was one of the following:

"(a) Retention on duty with or without change of station.

"(b) Retention in specially controlled duties with or without change of station.

"(c) Discharge from the Army Establishment and the type of discharge." (Par. 30c (7))

The entire case was then forwarded to the Adjutant General who referred it to the Army Review Board for "final review and recommendation." (par. 31). The inductee had ten days after receipt of the Field Board transcript of the hearing to submit "any brief, argument, or further information he may desire to have considered." In practice, of course, no one ever submitted anything further if the Field Board's decision was favorable.

But the Army Review Board did not always uphold a favor-

able decision of the Field Board. In Case 38, the Field Board's decision was:

"After due consideration of the documentary evidence with the allegations against you and your testimony before the board, by secret written ballot in closed session by a majority vote concurring, the board finds that you are neither disloyal, subversive nor a security risk, and your discharge from the Army in the interest of National Security, is not warranted.

"In view of the above findings, the board by secret written ballot in closed session by a majority vote concurring, recommends that you be retained in the Army with no further action to be taken, and that no reference to this board hearing or investigation be included in your personnel or field 201 file."

The Army Review Board must have reversed those findings and recommendations but neither the inductee nor his counsel were informed of this. More than two months afterwards, the man was informed orally that he would receive an "Undesirable" discharge the following day. His lawyer managed to have this action delayed by telephonic and telegraphic protest to the Adjutant General and, after a conference in Washington, was accorded the right to submit a brief and further information to the Army Review Board. The man has not been discharged; neither has he been officially cleared. He has received no notification whatsoever of the final decision. He will not know until he receives his discharge whether or not it will be based on these old charges of which he has once been cleared.

Other inductees have not been so fortunate. They have received "Undesirable" discharges without advance notice after having had a favorable recommendation from the Field Board. The Army found these reversals by the Army Review Board very bad from a public relations standpoint.

Defense counsel could properly point out:

1. That the Army Review Board had before it lesser evidence than the Field Board in that it had not had an opportunity to personally evaluate the probity of the defense witnesses and the Individual Concerned by observing their demeanor during the course of the field hearing.

2. That to reverse a favorable decision on such lesser evidence was incredible. Therefore:

- a. the reversal must have been based upon additional or different evidence from that considered by the Field Board, which was improper; or
- b. the Field Board had no recognizable function other than the assembling of information. Its finding of facts was a meaningless act and the performance it had conducted could not be properly called a hearing, at all.

Counsel and others found this situation unconscionable; the Army itself found it publicly untenable.

~~On November 10, 1955, the Army met these objections~~

by revising the procedures for the Field Board. (SR 600-220-1,

C 2). Now Par. 30c (8) states:

"The Board will inform the respondent that --

"(a) He or his counsel, upon request, will be furnished a copy of the transcript of the hearing; however, such transcript will not contain the Board's findings and recommendations. Such findings and recommendations will not be made public or divulged to the respondent or his counsel.

"(b) Its recommendations in the case do not constitute final and conclusive action but are subject to review by the convening authority and that the proceedings are forwarded to the Department of the Army for final review and decision.

"(c) He may submit to the Adjutant General, Department of the Army, Washington 25, D. C., in writing within 10 days of receipt of "Field Board" transcript, any further evidence or information he may desire to have

considered in a final review of his case by a Department of the Army Review Board, and that failure to receive additional information within 10 days of his receipt of the transcript plus normal mailing time will cause his case to be considered without further representation from or for him.

"(d) The record of proceedings of the Board will indicate that the respondent has been informed of the above." (Emphasis in the regulation.)

Thus the Army met the objection to the validity of a hearing before a board without authority by arranging to conceal the lack of authority.

Sub-paragraph (c) makes little sense other than to frustrate lawyers. Rarely is there further evidence or information to present. If a memorandum or brief is submitted it can only reiterate what has already been said and presented at the "hearing." It is basically an appeal in the dark without knowing the hearing board's recommendations.

G. Separation and Discharge

At the end of an inductee's statutory two years of active duty, he does not get a discharge. Normally he will get an "Honorable Separation from active duty and assignment to the Army Reserves," where he will remain for six years on inactive status. At the end of the six years, he will be discharged.

A person separated for security reasons, however, will not be assigned to the reserves. He will be discharged from the Army altogether.

Up until February, 1955, he could have received any one of the following types of discharge:

1. Honorable
2. General Discharge under honorable conditions.
3. General Discharge under honorable conditions with
barment from further military service.
4. Undesirable

In practice, it is believed that there were quite a few "Honorable" discharges for security reasons prior to February, 1954. After that, there were few, if any. Now they are virtually prohibited. On February 15, 1955, Department of the Army Message No. 58493 was issued, providing:

"Any person who limits his usefulness to the United States Army by acts or affiliations, past or present, over which he has complete control, and whose performance of service would otherwise warrant characterization as "Honorable" should, except under the most exceptional circumstances, upon the expiration of his term of service, have such service characterized as "under honorable conditions" and if discharged, be given a general discharge."

It would be hard to imagine circumstances that could be more "exceptional" than those of Case-27, where the man involved had "Excellent" ratings throughout his two years, raised by his own efforts his company's rating to "Superior", served as a Supply Sargeant even though he was frozen in a Private-2 rating, and whose superior officers went out of their way to officially commend him and urge his promotion with full knowledge of his alleged pre-induction "subversive" activities. Yet he was finally discharged with a "General Discharge under honorable conditions."

It will be interesting to see what kind of a discharge is accorded the man in Case 18, where all the allegations concern his father, mother, sister, and brother-in-law. He is

not even charged with being in sympathetic association with them. It is doubted that his lack of "complete control" over his brother-in-law or his "reported(ly) dominating" mother will help him much.

There seems no excuse for the giving of a "General Discharge under Honorable Conditions" in a security case. The General Discharge was designed and is still used for persons who can't learn to march or are otherwise not quite bright, or for persons whose series of minor indiscretions make them of more bother to the Army than they are worth.

DA Message 58493 (quoted above) attempts to justify giving a "General" on the basis that the man has "limited his usefulness to the Army" by his pre-induction activities.

First of all, this is not always true. While many men, particularly while under investigation and before hearing, are given pointless assignments which seem calculated to degrade them, this is an Army decision and an unnecessary one. (See Cases 35, 44, and 50) Not all important, even essential, duties are security-sensitive assignments. Somebody has to do them. Some inductees under "specially controlled duties" do perform valuable and responsible work outstandingly; duties which they might well have been assigned to without the "specially controlled" stigma. (See Cases 27, 34).

Secondly, this is an extremely dangerous concept and is believed to be an ex post facto rationalization of an unpalatable policy previously adopted for entirely different reasons.

In testifying before the Senate Armed Forces Committee on March 18, 1954, Secretary of the Army Robert T. Stevens stated:

"The traditional policy of the Army has been that the discharge given should reflect the service rendered. In other words, a man whose conduct has been faithful and honest during his time in the service would be entitled to separation under honorable conditions, notwithstanding what his conduct may have been prior to entering service."

"This policy is still followed, but as I previously stated, I recently changed it in one aspect and directed that where a man is discharged from the service because he is found to be disloyal or subversive, his separation within the limits of the law should be under other than honorable conditions, regardless of the actual character of the service rendered."

"When the evidence fails to show that he is disloyal, or subversive, but does establish that he is otherwise a security risk and should be eliminated, he is separated under honorable conditions, usually with a general discharge."

This is a clear statement of departure from a policy which is not only traditional but seems to be the only possible policy if the Army is not going to assume control over the lives of

civilians -- at least that large segment of the civilian male population which is sooner or later drafted. What possible justification can be offered for granting a discharge based on anything other than activities while in the Army and the character of the service rendered? (This will be discussed further in the next chapter.) The justification offered at that time to the Armed Services committee was an entirely different one than that advanced in DA Message 58493.

Admiral Arthur W. Radford, chairman of the Joint Chiefs of Staff, stated:

"An easy solution to the problem would be to issue orders to drop anyone about whom there was the slightest suspicion of disloyalty and declare as

a suspect anyone who refused for any reason, including the Fifth Amendment, to execute the loyalty certificate to our satisfaction."

"Under such a directive, a young man about to be inducted could avoid military service merely by scribbling across the certificate "Refuse to answer, Fifth Amendment." He would have thereby successfully avoided all compulsory military service - and, unfortunately, without sufficient stigma to prevent such a directive from being abused."

"Under such a set of rules the Selective Service Act would become a farce to anyone willing to subscribe to such tactics, sufficiently nefarious to most but, unfortunately, not to all. Our experience has been that a few young men will go to extreme lengths to avoid military service."

"Therefore, we reluctantly accept as a solution, for lack of a better one, the taking of this type of young man into the service with certain safeguards, namely: his record is to clearly show his status as being a "security risk"; he is to remain in the lowest enlisted grade during his tour of duty; he is not to be promoted; he is not to be appointed, enlisted or retained beyond his obligatory service; he is not to be placed in any position of responsibility or authority, and he is not to have access to any classified information. He is to remain in this status unless he has a change of heart and voluntarily clears himself."

So these men are treated in this way not because they have limited their usefulness to the Army but to keep the Selective Service System from becoming "a farce." That, and to quench the Congressional fire over the Peress case.

According to all other governmental policy either a person is a security-risk or he isn't. If he is, or is adjudged to be, he is fired. If he isn't, he continues in employment and eventually draws a pension. Only the Army sets up a third security category, that of an "almost subversive" and gives him a "General" discharge.

A further factor should be noted about separations and discharges. The Army is not consistent.

Consider the Cases 7, 8, 33, and 34. The primary charges are almost identical, involving the Independent Socialist League and the Socialist Youth League. In fact, three of the men went to college together and participated in most of their activities together. All of them have excellent military records, two of them outstanding. Case 7 received an "Undesirable" discharge which was later changed to a "General". Ten months after Case 7 received his "General" discharge, Case 34 received an "Undesirable." Yet, approximately one month before Case 34 received his "Undesirable," Case 8 (who has completed his active service and was served with the allegations after he had been in the Reserves for four months) was apparently cleared of the charges with the decision that, "You will be retained in your present status (that of a corporal) in the Army Reserves."

Now this variation was not a matter of evidence and proof for all of them freely admitted their active pre-induction association with the ISL and the SYL. Case 34, the one person who admitted these associations on his Loyalty Certificate DD 98 at the time of induction, received an "Undesirable." (The others, through inadvertence, had said, "No.") Case 8 was cleared even though he had the added burden of a grandfather.

Just about the time Case 8 was being cleared, Case 33 was being served with his Letter of Allegations and his hearing is still pending. It does not seem to make much sense.

As previously mentioned, the threat of an "Undesirable" or "General" discharge for non-Army-related activities does not terminate with the completion of the two years of active duties. In the same manner that the Army considers pre-induction activities, it considers post-service activities valid factors in determining the character of discharge. (See Cases 3, 5, 8, 10, 23, 25.) As stated in Case 10:

"On the question of the jurisdiction of the individual concerned, there is really no difference actually -- he is still -- the defendant is still under military jurisdiction in that he is a member of the USAR. The difference between active duty and reserve duty is not a distinction, and it has full authority to act on such matters because of the fact that he is still in the military service. Consequently, the request or the challenge is denied in this case because it does have the jurisdiction."

How post-service activities can "limit his usefulness to the United States Army" has not been explained by the Army. A draftee in the reserves is not subject to service except in ~~a "war or national emergency declared by Congress."~~ In World War II all men up to the age of forty-five were subject to the Selective Service Act. In a new national emergency involving military defense, everyone -- both men and women -- is likely to be subject to a genuine Universal Military Training and Service Act. Is it the domain of the Army to exercise the power of censorship and punishments over everybody for his political and social activities and beliefs? If not, how did it acquire this

* The "punishment" goes beyond the stigmata of the discharge, which, in itself, bars from major areas of employment. Veteran's Rights and Benefits, DD form 214-1, (Appendix C, pp. xx, xxi) sets forth some of the federal benefits accruing to those who have served "under honorable conditions." Many of the states have additional rights and bonuses. Most of these are lost to a person with an "Undesirable" discharge. Some of them are lost with a "General."

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power under existing law over those who have completed their legal obligation of two years of active service?

H. Post-Discharge Appeals

Army Discharge Review Board

Any veteran has the right to appeal the character of his discharge to the Army Discharge Review Board at any time within fifteen years of receiving the discharge. If he elects he is entitled to have a hearing before this board either in Washington, D.C., or in Puerto Rico. A number of men with security discharges have availed themselves of that right.

The Army Discharge Review Board is a statutory board. It is outside the chain of command of the Adjutant General and its primary purpose is to correct injustices growing out of the too harsh administration of the letter of the regulations. No criteria are set up to control its decisions and it has no power to pass upon the factual basis for the initial determination. Its mission is essentially one of equity, or, as expressed by its recorder, "of compassion and mercy."

It was never intended to be a part of the security program and is ill-designed to perform this function yet it is the only hearing board available to those who received security discharges prior to June, 1954.

This is the only "hearing" ever offered these men. The board is not bound by the criteria set forth in SR 600-220-1. (See Appendix B.) It has no legal frame of reference in arriv-

ing at its decisions on security.

In practice, the Discharge Review Board is no worse than any - and far better than some - of the Field Boards of Inquiry in its conduct of the "hearing." But these men are entitled to a hearing on the merits, not to compassion and mercy.

For those, who have already had a Field Board hearing there has been little practical value in going to the Discharge Review Board. In none of the cases examined was the preceding decision disturbed. (While in Case 7 the initial change of the "Undesirable" to a "General" discharge was technically made by the Discharge Review Board, it was done before a hearing was granted and is believed to have been done on instructions - or "suggestion" - from higher authority as a result of public protest. At the subsequent hearing on the appeal from the "General" discharge the former decision was upheld.) The writer believes that in the course of time some of the "Undesirable" discharges will be changed to "General." In the absence of a basic change of policy, it is highly unlikely that many "General" discharges will be changed to "Honorable."

The reasons most attorneys advance for recommending an appeal to this board are the possibility, however remote, for complete clearance and the belief that it is probably a necessary step in the exhaustion of administrative remedies in preparation for court action.

Board for the Correction of Military Records

The Board for the Correction of Military Records is likewise without the security program and is not designed to aid those who have security discharges. Its purpose is to correct technical flaws in "Records," not to pass on procedural or substantive judgments. The appeal to it is considered routine in the exhaustion of administrative remedies process and is done on written application.

Hitherto, no hearing has been granted. There was an interesting development in July, 1955, however, in Case 13. After the man had lost his appeal to the Army Discharge Review Board and to the Board for Correction of Military Records, his attorney made an appeal by letter, in February, 1955, to the Secretary of the Army. Not having received a favorable reply by May, he instituted suit in the United States District Court. In July, he received a letter from the Assistant Secretary of the Army offering him a hearing before the Board for the Correction of Military Records to give him a further opportunity to present "additional information."

The Secretary of the Army

As the Departmental head is responsible for the security program in each governmental department, a draftee with a security discharge always has the right to make this personal appeal after he has exhausted all other administrative remedies. We

know of no case where such an appeal has been successful. (See above.)

* * * * *

There are no further administrative appeals available, with the possible exception of one to the President as Commander in Chief. If there is any further step to be taken it must be through court action. Whether such an action can be maintained remains to be adjudicated. Some of the legal bases advanced for the validity of such an action will be set forth in the next chapter.

IV

THE LEGAL BASIS FOR THE DISCHARGE

A. Universal Military Training and Service Act

The reason the Army has been able to do these things to these young men is because they are inducted into the Armed Forces under the provisions of the Universal Military Training and Service Act.

Who Will Serve

This act used to be called the Selective Service Act, which was a more appropriate title. The law is not really universal (even if that is defined to mean the confines of the United States) and it is not always for military training. It applies only to males between the ages of eighteen and twenty-six and to doctors, dentists, and certain others with specialized skills.

It is not the province of this report to consider this law in full but only those aspects of it that have direct bearing on what the Army is doing -- and presumably on why it is doing it.

The law states:

"The Congress declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy." (50 App. USC 451 (c).)

Such a "fair and just" system of selection could not in a democratic state include a political test. And it does not as far as the Selective Service System is concerned. Men are selected quantitatively upon Armed Forces requisitions of need in accordance with legal restrictions upon the size of the military establishment. They are selected qualitatively upon just and clearly defined criteria for classification and generally fair provisions for hearing and appeal.

Just because the Selective Service System has declared a person eligible for and liable to induction, however, does not mean that he will be inducted. The Army exercises its veto power over the selection at the point of induction. The Army reserves the right to reject anyone it sees fit for whatever reason it sees fit. Whether or not this is a valid reservation is not pertinent to the present study.* What is pertinent, however, is the validity of the political criteria employed by the Army in making such rejections.

* A suggestive line of research arises at this point under the Second Amendment to the Constitution, which states:

"A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

If the right of the people to bear arms shall not be infringed because of the necessary purpose of maintaining a well regulated militia, what right does the Army have to infringe this right to bear arms of those of the people which a properly constituted civilian authority determines shall bear arms in a drafted army - which is a mere extension of a well regulated militia? In short, what right does the Army have to reject anyone the local draft board selects?

As previously indicated (P.20), the Army regulations provide that a known Communist will not be inducted (SR 600-220-1, par. 15a); nor will a person concerning whom there is "significant information to indicate that induction and retention within the military service would be inconsistent with the interests of national security." (SR 600-220-1, par. 15b.)

What the Army means by a "known Communist" it says in SR 600-220-1, par. 2f:

"a known communist* is any person who claims to be a member of the Communist Party or any person on whom credible derogatory information** exists indicating such membership."

* There is a curious and confusing ambiguity employed by most of the government agencies in their security regulations in the use of "small 'c'" and "large 'C'" communists. Here and in par. 15a, the Army identifies a "small 'c'" communist as a member of the Communist Party, but in the criteria (par. 11b (4) see Appendix B 1., p. xii.) uses the "large 'C'" in equating proscribed activities with membership and association with Attorney General's list organizations.

Yet the Attorney General himself does draw a distinction. He has designated as "communist" an organization which he admits to be anti-Stalinist and which proclaims itself and is generally believed to be non-Trotskyist. At a recent hearing (July 18, 1955) to determine the validity of the Attorney General's listing of this organization, the government attorney refused to give a definition of what was meant by "communist" under such circumstances. He emphasized his point, if such it is, by stating that what was under consideration was "small 'c' communism, which everyone knew the definition of.

** For a definition of "credible derogatory information," see footnote, p. 20.

What the Army means by "inconsistent with the interests of national security" is not so clear. (Cf. p. 17.) It would appear from the regulations that "the ultimate determination ... must be an overall common sense one based upon all available information," (par. 11b) with "reasonable grounds exist (ing) that retention of a member is not clearly consistent with the interests of national security" (par. 3b) and with "any doubt...resolved in favor of the member." (par. 3b) That such is not the case is clearly consistent with the most cursory examination of the cases set forth in Appendix D. As soon as we get into the question of "clearly consistent," if the determination must be based on the criteria now in use, it is obvious that "common-sense" must fly out the window. The two are clearly inconsistent.

Period of Service

While there was pending before the Congress in mid-July 1955, a "ready reserve" bill which would slightly strengthen the basis for the Army's claim to control the activities of draftees after they have completed their period of active service, the basic arguments against such control will remain. In any event, there would seem to be no legal or logical basis to justify the control hitherto exercised.

The total period of service is eight years:

"Each person who...is inducted...prior to attaining the twenty-sixth anniversary of his birth shall be required to serve on active training and service...and in a reserve component for a total period of eight years, unless sooner discharged on the grounds of personal

hardship, in accordance with regulations and standards prescribed by the Secretary of Defense." (50 App. USC 454 (d) (3).)

The initial period of active service is set forth in

50 App. USC 454 (b):

"Each person inducted into the Armed Forces... shall serve on active training and service for a period of twenty-four consecutive months, unless sooner released, transferred or discharged in accordance with procedures prescribed by the Secretary of Defense...."

Upon completion of his period of active service, the inductee is assigned to the reserves:

"Each such person, on release from active training and service... shall, if physically and mentally qualified, be transferred to a reserve component of the Armed Forces and shall serve therein for the remainder of the period which he is required to serve... and shall be deemed to be a member of such reserve component during such period. In case the Secretary of the Army... determines that... assignment to an organized unit of a reserve component... is available to, and can, without undue personal hardship, be filled by any such person, it shall be the duty of such person to... accept assignment to such organized unit and to serve satisfactorily therein.... Nothing in this subsection shall be construed to prevent any person, while in a reserve component of the Armed Forces, from being ordered or called to active duty in such Armed Forces." (50 App. USC 454 (d) (3).) (Emphasis supplied.)

It must be under the underlined portion of this section that the Army presumes to exercise post-active service control over the individual's activities. Yet this has no current application for s. 454 (i) (6) of the law states:

"Notwithstanding any other provision of this subsection... except in war or national emergency hereafter declared by the Congress, no person who has served in the active service since September 16, 1940, for a period of twenty-one months or more, shall be liable... for call or order to active duty."

Thus the Army has no right to call a man back into active service once he has completed his twenty-four months of active duty. It even cannot force him to go into the organized reserve. The next step is up to Congress. Until it declares war or a national emergency, these men who have already served have nothing to do with the Army except to get their discharge at the end of six years -- unless the Army chooses to bring them up on security charges which, even if true, have nothing to do with the Army or their service therein.

B. The Character of the Discharge

As stated by Secretary of the Army Stevens,

"The traditional policy of the Army has been that the discharge given should reflect the service rendered. In other words, a man whose conduct has been faithful and honest during the time in the service would be entitled to separation under honorable conditions, notwithstanding what his conduct may have been prior to entering the service." (Emphasis supplied. See P. 64.)

This is not only the traditional policy but is the current policy in all other than security cases. AR 615-360, which is the Army regulation setting forth the general provisions for discharge of enlisted personnel (including inductees), states in par. 7:

"Because the type of discharge may significantly influence the individual's civilian rights and eligibility for benefits provided by law, it is essential that all pertinent factors be considered so that the type of discharge will reflect accurately the nature of service rendered." (Emphasis supplied.)

As previously shown, this policy was modified in security cases as testified to by Secretary Stevens (See p. 65.), by SR 600-220-1,

and by DA Message 58493 (quoted at p. 63).

The Honorable Discharge

Ordinarily, subject to special exceptions such as the security regulations:

"An honorable discharge certificate will be furnished when the individual meets the following qualifications:

- (1) Has character ratings of at least 'very good.'
- (2) Has efficiency ratings of at least 'excellent.'
- (3) Has not been convicted by a general court-martial.
- (4) Has not been convicted more than once by a special court-martial." (AR 615-368, par. 8a.)

An Honorable discharge is a badge of honor but it is limited to time and place and particular service. It is a certification of the particular character of military service rendered; it is not a certification that the man has not been a rogue in civilian life or that he will not become one.

As a symbol of military service rendered, it carries with it legal and other tangible benefits. As stated in United States v. Keating, 121 Fed. Sup. 477 (USDC, Ill., 1949):

"An honorable discharge is an extremely valuable property right as well as a personal right and to deprive a person of an honorable discharge is to deprive him of property rights, as well as civil rights and personal honor. To destroy such a certificate of title... in an arbitrary way in a unilateral proceeding, is contrary to our ideas of democracy. This country depends upon a citizen army and navy and the rights of citizens are only to be temporarily impaired, to the minimum extent consistent with national safety."

That the Army does destroy this certificate "in an arbitrary way in a unilateral proceeding" contrary to the Constitution will be shown below.

The General Discharge

AR 615-360 states that, "The effects of an honorable discharge and a general discharge are identical and entitle an individual so discharged to full rights and benefits." While this is technically true under the letter of federal law, it is not always true under varying state laws and is generally not true as far as private employment is concerned. As the discharge certificate in these cases has typed on it "SR 600-220-1 applies" -- which only means "Disloyal and Subversive" -- it is an effective bar to all public employment, virtually all defense industry employment, and most other private employment where the discharge certificate has to be shown.

It is generally recognized that a General discharge is "sub-standard." In the absence of the "Disloyal and Subversive" identification, it is used in such cases as military ineptitude or minor manifestations of homosexual propensities. The Army is so aware of its lesser value that the regulations provide:

"Notwithstanding the foregoing criteria (for an honorable discharge, quoted P. 79 above), when disqualifying entries in the individual service record during current service are outweighed by subsequent honest and faithful service over a greater period of time, an honorable discharge may be furnished....In addition, careful consideration will be given to the nature of the offense and sentence adjudged by a court-martial in applying the provisions of a (3) and (4) above, and when, in the opinion of the officer effecting discharge, these have been not too serious and severe, and the remainder of the service in the enlistment has been such that an honorable discharge would have been granted had the conviction not occurred, an honorable discharge certificate may be awarded." (AR 615-360, par. 8b.)

Except for the previously quoted DA Message 58493, which says, in effect, that a man should get a General discharge when the character of his service entitles him to an Honorable, there is no clear definition of the standards for a General discharge. The regulations state that, "Individuals discharged under honorable conditions which do not qualify them for an honorable discharge will be furnished a general discharge." (AR 615-360, par. 9.)

The criteria is suggested but not spelled out by the following:

"Continued effort and attention will be given to the early detection of individuals who are in fact inept, untrainable, or unsuitable for military service. Those individuals who are found to be so lacking in abilities and aptitudes as to require frequent or continued special instruction or supervision, and those individuals whose interests and/or habits frequently require corrective or disciplinary action, will be identified as soon as possible after acceptance for service in the Army with a view toward (discharge or release from active military service prior to expiration of induction under appropriate regulations.)" (AR 615-360, par. 10a.)

So uncertain is the Army as to the validity of this General discharge even for inept service that it reemphasizes:

"Officers effecting discharge are authorized and required to deviate from this criteria and furnish an honorable discharge when, after considering all aspects of the individual's service, it appears that furnishing a general discharge would not be in the best interest of the service or the individual." (AR 615-360, par. 9.)

Yet the General discharge has become the general dumping ground for all those against whom security charges are brought although the charges have not been "proved" even by the Army's dubious standards of proof. It is the Army's way of creating the label of "Almost Subversive."

The Undesirable Discharge

One would expect that an Undesirable discharge, which is fraught with such dire and permanent consequences to the person receiving it, would be clearly defined in the regulations and those consequences set forth. Such is not the case.

Nowhere in the pertinent security or related regulations is the character of the Undesirable discharge explained or are the conditions under which it will be imposed fully delineated. It is believed that it is in fact nowhere defined.*

The general regulations for discharges (AR 615-360) make no reference to an Undesirable discharge except in a listing of the types of discharge certificate in use. It formerly stated:

"13. When discharge or release from active military service is to be effected prior to expiration of...induction..., it will be accomplished under whichever is appropriate of the following regulations:

.

m. Disloyal or subversive -----AR 615-370."

The regulation referred to "AR 615-370, Disloyal and Subversive," did in fact set forth the conditions for an Undesirable discharge on security grounds. This regulation has been completely superseded by SR 600-220-1 and the general regulations now refer to it.

* It is possible that this definition appears in some regulation which has not been available to the writer, although he doubts it. If so, its inavailability only emphasizes the unnecessary difficulties imposed by the Army upon the defense in these cases.

SR 600-220-1, however, only specifically provides for an Undesirable discharge in one case:

"(1) In the case of an inductee who refused to accomplish DD Form 98 in its entirety--

(a) If retention is inconsistent with the interests of national security, he will be discharged with an undesirable discharge." (Par. 15 (b).)

In all other cases, the discharge "will be predicated upon the character of the service performed." None of the over one hundred security cases examined justified an Undesirable discharge based upon the character of the service performed. In virtually none of the hearings examined has the character of the service been raised as an unfavorable factor for consideration in the recommendation of the type of discharge. Therefore, it would seem that, under the Army's own regulations, the Undesirable discharge is inappropriate except where the inductee refuses to execute DD 98 (the Loyalty Certificate) in its entirety.

C. The Basis for the Army Security Program

The Department of Defense's Security Program, and, in turn, that of the Department of the Army, is not an integral part of the "Federal Employees Loyalty-Security Program." Public Law 733, 81st Congress, (5 U.S.C. Sec. 22-1 et seq.) and Executive Order 19450⁰ issued thereunder specifically apply to civilian employees. (Pertinent excerpts appear in Appendix B.) The validity of Executive Order 10450 and the constitutionality

of P.L. 733 are beyond the scope of this study.

The Department of Defense, however, has attempted to adapt Executive Order 10450 to military personnel as well. It is unfortunate that it has.

The Federal Employee program is ill-adapted to the needs of the Armed Forces. The use of it in conjunction with the compulsory aspects of the Selective Service law has resulted in gross inconsistencies and gross injustices. Furthermore, it was unnecessary.

Executive Order 10450

Executive Order 10450 makes two fundamental assumptions:

- (1) Employment and retention in employment by the government is a privilege and not a right.
- (2) Employment and retention in employment by the government of any particular individual must be "clearly consistent with the interests of national security."

The classic statement of the first assumption was made by Mr. Justice Holmes while a member of the Supreme Judicial Bench of Massachusetts in a case upholding the Constitutional validity of a New Bedford city regulation prohibiting political activities by policemen. He said:

"The petitioner may have a constitutional right to discuss politics but he has no Constitutional right to be a policeman."

This concept was more recently stated in Bailey v. Richardson, 182 F. 2d 46, (aff'd by an equally divided court at 341 U.S. 918), in upholding the Federal Employee Loyalty Program.

Nevertheless, the question of whether or not government employment is a privilege, at least insofar as retention of one already so employed is concerned, has not been unequivocally ruled upon by the United States Supreme Court. That it is open to possible challenge is suggested, in passim, by the unanimous decision of the Court in upholding the necessity for "due process" in the Federal Employee Security Program. In Wieman v. Updegraff, 344 U. S. 183, the Court stated, at p. 193:

"We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."

The Bailey case, however, had stated at p. 65:

"It is our clear opinion that the President, absent congressional restrictions, may remove from government service any person of whose loyalty he is not completely convinced. He may do so without assigning any reason and without giving the employee any explanatory notice."

The Wieman decision has already modified part of this opinion; there is competent constitutional authority for the belief that the rest of it will be modified or repudiated by the Supreme Court when the question properly comes before it.

The Army's military personnel security regulations in their present form (SR 600-220-1) are primarily based upon Department of Defense Directive 5210.9, issued April 7, 1954.

This directive states:

"A. Purpose.

1. The purpose of this directive is to effect re-issue with certain modifications of the various Armed Services directives to apply to military personnel the criteria for security programs established as national policy for civilian personnel by Executive Order 10450 as amended by Executive Order 10491."

Thus the Army acted without statutory authority and in disregard of the specific restriction of the law, and the executive orders issued thereunder, to "civilian employes."

Not only is there no question that inductees are not civilians but there is serious question that they are "employes," at all. To consider them government employes is a repudiation of the entire "privilege" theory of such employment and, hence, a repudiation of the stated justification of the executive orders upon which the Armed Services have chosen to base their entire military personnel security program.

Furthermore to hold that an inductee is a government employe would have the effect of placing him in a condition of "involuntary servitude" in violation of the Thirteenth Amendment to the Constitution. A long line of court decisions had held that drafting for military service and other service incident thereto does not constitute involuntary servitude within the meaning of the Constitutional prohibition. This conclusion can only be arrived at if the draftee is not an employe as ordinarily understood. The Department of Defense has, therefore, committed a fundamental error in reaching the decision to so base its program.

It was completely unnecessary for the Armed Services to do this. The Army (and the other services) has amply general powers to punish and discharge for misconduct or disloyalty. Under Article 94 of the Uniform Code of Military justice it has the specific power to court-martial for "seditious conduct" while in the Army. The effect of this decision has been to deprive the inductee of many of his Constitutionally protected rights.

D. The Effect of the Program

The Discharge

The Undesirable discharge is a badge of "dishonor." It must be worn, not because of acts committed against the Army, but because of pre-induction or post-service legal acts, associations, and opinions now thought to indicate a disloyal or subversive "state of mind."

The Army can discharge a man if it is not satisfied with his service, but it can not discharge him and defame him at the same time. To give him anything other than an Honorable discharge when the character of his service is unquestionably "honorable" is such an act of defamation as is specifically prohibited by the First Amendment. (Taylor v. Mississippi, 319 U. S. 583; United States v. Ballard, 322 U. S. 78; Thomas v. Collins, 323 U.S. 516)

If such discharges were ordered by an act of Congress they would be immediately declared invalid as "a bill of attainder." (Cummings v. Missouri, 4 Wall. 277; Ex parte Garland, 4 Wall. 333; United States v. Lovett, 328 U.S. 303, 317, 318.)

They are also the infliction of punishment upon these men without a judicial trial, in violation of the Sixth Amendment.

"Punishment" was defined by the United States Supreme Court in Cummings v. Missouri, 4 Wall. 277, as follows:

"The theory upon which our political institutions rest is, that all men have certain inalienable rights - that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of all these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined." (at pp. 321-322)

The life-long punishment consequences upon a man of an Undesirable discharge, or even a General discharge with the notation "SR 600-220-1 applies," cannot be over-emphasized. In discussing a bar to public employment because of a "disloyal" determination, an unanimous Supreme Court stated:

"There can be no dispute about the consequences visited upon a person. . . . In view of the community, the strain is a deep one; indeed it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when 'each man begins to eye his neighbor as a possible enemy.'" (Wieman v. Updegraff, *supra*, at pp. 190, 191.)

Even with the waning of the "cold war" and the developing official sentiment for "co-existence" (Cf. last series of questions in Case No. 11, reported in Appendix C), such "eyeing" continues.

Some of these consequences have already been discussed. They include, in the case of an Undesirable, loss of mustering out pay, 'accumulated leave, and most veterans' benefits. In the case of a General Discharge, they include loss of many veterans' benefits, primarily on the state level. In both cases, they are a serious and permanent threat to the right to work. This right was ably expressed by David I. Shapiro, in a brief prepared to be submitted in Harmon v. Stevens. (This case, now pending in the United States District Court for the Southern District of New York, is the first court challenge of the basic regulations and procedures resulting in an Undesirable discharge on security grounds.)

Mr. Shapiro said:

"The right to work is perhaps the most precious liberty that man possesses. It does many men little good to stay alive and free and propertied if they can not work. To work means to eat. It also means to live."

The Criteria

These criteria are set forth in Appendix A. They are identical with those for civilian employees of government, set forth in Executive Orders 19450 and 10491. They invite the careful analysis which space here does not permit.

Some of them would be valid if applied under proper procedures and restricted to the period of service in the Armed Forces. As presently defined and applied, they are believed to be invalid in toto.

The Hearing

It is a fundamental principle of the constitutionally guaranteed right to "due process of law" that there cannot be a determination of this nature without a hearing. Before April, 1954, no hearing whatsoever was accorded the inductee on the allegations prior to determination and discharge.

The Army justified this procedure by explaining that if a man was dissatisfied with the type of discharge he received and believed that he had a valid grievance he could always appeal to the Army Discharge Review Board. This five-man board would give him a hearing if he wanted one.

The Army Discharge Review Board is established under the authority of 38 USC 693h. It has no criteria of its own (See p. 69); it is specifically instructed in the statute to apply the standards of the appropriate regulation under which the discharge was issued. Its criteria in a security case, therefore, have no greater validity than those of AR 600-370, and its successor, SR 600-220-1.

It has disclaimed responsibility for making a re-evaluation of a previous factual determination and ostensibly acts only to correct an improper or unjust application of the regulations to such factual determination and to consider additional evidence which may modify such determination. In these earlier cases the factual determination -- and the resulting discharge action -- was made without any hearing whatsoever. It is at least questionable that such an ex post facto hearing has any legal validity. It could certainly have no validity if the Discharge Review Board

held itself bound by such determination, in the absence of additional evidence. (In practice, the Discharge Review Board appears to examine afresh the evidence presented. As a minimum, however, it must be inclined toward acceptance of the previous determination.)

The inductee facing security charges is no more protected in his right to "due process of law" since the establishment of the Field Board hearings than he was before. It is axiomatic (and affirmed by court decisions) that if a hearing is accorded it must be a fair one.

The Field Board hearings are not really hearings at all. In order to have a valid hearing, the hearing board must make a finding of fact based upon proper standards set forth in the regulations in conformity to law. This finding of fact must be based upon the evidence properly before it, not upon information acquired outside of the hearing room. If the final determination is made by some authority other than that which makes the finding of fact, such authority must be bound by the facts "found" by the hearing board; otherwise the hearing is an absolute sham.

All of these requirements and others are violated by the Army's Field Board of Inquiry "hearings." Only a few will be cited. The board members examine the file of alleged "information" in advance of the hearing; such "information" is never introduced into evidence so that there is no opportunity to rebut it. This "evidence" which the hearing board considers include unsworn statements of fact and opinion from unknown

informants. It is not evaluated and there is no way in which it can be evaluated. It is often of a nature that would only be admissible if submitted by a qualified expert yet no effort is made to so qualify it. The person charges never has an opportunity to confront his accusers and subject them to the rigors of cross-examination. This "information," insofar as some inkling of its contents is available, is replete with extraneous, incompetent and other matter immaterial to the charges. The prosecuting officer (the recorder) acts in the additional capacity of legal advisor to the hearing board.

Most serious of all, perhaps, is that the Field Board has no authority whatsoever other than to sit and "hear." It can make no determination and its findings of fact may be ignored by the Army Review Board. Nobody has to pay any attention to it and, on occasion, nobody does.

* * * * *

This analysis of the legal basis of the security discharge is intended to be suggestive only; not exhaustive of its legal imperfections. Further study of this matter is being made and a more detailed presentation of the invalidity of the criteria and the procedures will be made at a different time.

CONCLUSION

At the beginning of this study there were laid down certain rights to which every young man subject to the Universal Military Training and Service Act is entitled (p. 11). To the writer these rights seemed self-evident and unchallengeable.

Yet the Army has challenged in regulation and practice everyone of those over which it has any control. They are:

- a. The right of a man not to be drafted if the Army knows it will not permit him to serve on the same basis as any other draftee.
- b. The right, if drafted, to serve on the same basis as any other draftee within the limits of his capabilities.
- c. The right to a separation and discharge based upon the character of the service rendered while in the Armed forces.

The Army has violated these rights in order, according to Admiral Radford, to prevent the Selective Service Act from becoming "a farce." This argument is specious and absurd. To base such a sweeping program upon the assumption that any substantial number of persons would claim the federal Constitutional

privilege against self-incrimination for the sole purpose of avoiding military service is un-realistic and insulting. The Selective Service law needs no protection from the Army. If there are loopholes in it they can be plugged by Congress; if it is being violated it can be protected by the courts.

The Army adopted this program, in the first instance, under a belief that it should incorporate the Presidents' loyalty and security programs for civilian governmental employees into the military regulations. In doing this it ignored the fundamental assumption of the Executive Orders that government employment is a privilege and tried to apply it to persons who had not sought a "privilege" but were performing a duty under the Universal Military Training and Service Act.

This was unnecessary because the Army always had and exercised the right to protect itself against disloyal personnel. It still has that right and exercises it under the Uniform Code of Military Justice.

The effects of this wrong decision have been:

1. To burden the Army with men it claims it doesn't want and to force it to create a vast and expensive system of detection, investigation, hearing, and determination in a field to which it is ill-fitted and ill at ease.
2. To make it assume the role of jailor of those who are charged with no crime.

3. To permit it to assess punishment of life-time duration (through the discharge) upon those who have committed no offense against the Army.
4. To extend its control over the civilian lives of all those subject to military service under the Selective Service law from earliest adolescence until six years after they have completed their active service with the Army.

Having made this wrong decision with these effects, the Army, in implementing this program, has deprived many persons of their legal and constitutional rights. Detailed examples are set forth in the body of this study. They include:

1. Denial of any hearing to many men.
2. Denial of a valid hearing to all of the men charged with allegations of derogatory information.
3. Imprisonment without trial.
4. Punishment without conviction of crime.
5. Deprivation of property rights.
6. Imposition of attainder.

The Army should scrap the whole Military Personnel Security Program and reassert its right to administer its own discipline within the framework of its Constitutional and statutory powers. A new program within such a framework, would start with the following premises

1. The Army is responsible for persons subject to the Selective Service law only during the period of their active

duty in the Army, therefore, the Army repudiates the responsibility unwittingly imposed upon it by the Congress to assume jurisdiction over the political and social life of an inductee for a period of six years after he has completed such active duty.

2. The Army is not the administrator of the Selective Service law but only its beneficiary; therefore, responsibility for its effective operation rests with the Congress, the courts and the Selective Service System, and the Army will not permit itself to be used as an instrument for punishment of those who try to evade their duties under the law.
3. Within the limits of established standards of eligibility and procedure, the Army must be the sole judge of whom it will permit to serve in its ranks and that judgment will be based solely on its military needs; therefore, the Army will not accept into service anyone who is not in a position to be permitted to serve fully in accordance with his capabilities.
4. The Army will accord to each man within its ranks, in security cases, the same full hearing rights that are guaranteed him by the Uniform Code of Military Justice, he defending himself against any other charge.
5. In accordance with traditional policy, the Army, if it decides that it does not choose to retain a man on either active or Reserve duty, will accord him a discharge based solely on the character of the service he has rendered.

* * * * *

APPENDICES

A. Laws and Regulations (Excerpts)

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C. Cases

Separate Volume

1. SR 600-220-1. Military Personnel Security Program

(Par. 11 b, Criteria)

The ultimate determination of whether acceptance or retention within the Army Establishment of the person concerned is clearly consistent with the interests of national security must be an overall common-sense one based upon all available information. The activities and associations listed below, whether current or past, while not all inclusive, are of varying degrees of seriousness and warrant initiation of action to effect such determination.

(1) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any act or sabotage, espionage, treason, or sedition.

(2) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with any espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of the Government of the United States by unconstitutional means.

(3) Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of the Government of the United States by unconstitutional means.

(4) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means (see SR 600-220-11). (An organization, movement, or group, officially designated by The Attorney General of the United States to be totalitarian, Fascist, Communist, or subversive, to advocate or approve forcible or violent denial of constitutional rights, or to seek alteration of the form of Government of the United States by unconstitutional means, shall be presumed to be of a character thus designated until the contrary be established.)

(5) Performing or attempting to perform his duties, or otherwise acting, to serve the interests of another government in preference to the interests of the United States.

(6) Failure or refusal to sign the loyalty certificate DD

Form 98; pleading protection of the Fifth Amendment or of the Uniform Code of Military Justice, Article 31, in refusing to completely answer questions contained in DD Forms 98, 390, 398, or other related forms; pleading protection of the Fifth Amendment or of the Uniform Code of Military Justice, Article 31, or otherwise failing or refusing to answer any pertinent question propounded in the course of an official investigation, interrogation, or examination, conducted for the purpose of ascertaining the existence or extent, or both, or conduct of the nature described above and below.

(7) Participation in the activities of an organization as a front for an organization referred to in (4) above, when his personal views were sympathetic to the subversive purpose of such organization.

(8) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purpose.

(9) Participation in the activities of an organization referred to in (4) above, in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

(10) Sympathetic association with a member or members of an organization referred to in (4) above. (Ordinarily, this will not include chance or occasional meetings, or contacts limited to normal business or official relations.)

(11) Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to above. A close continuing association may be considered to exist if the individual lives at the same premises as, frequently visits, or frequently communicates with such persons.

(12) Close continuing association of the type described in (11) above, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(13) Any facts other than as set forth in (c) below which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security. Among matters which should be considered in this category would be the presence of a spouse, parent, brother, sister, or offspring in a nation, a satellite thereof, or an occupied area thereof, whose interests are inimical to the interests of the United States.

(Par. 11 c. Relief from Active Duty or Discharge)

Persons who fall within the criteria prescribed below are examples of members whose retention may not be clearly consistent with the interests of national security. However, action will not be initiated to relieve from active duty or discharge such persons under these regulations unless the criteria set forth in (b) above are also substantially involved, or action under other directives or regulations or the Uniform Code of Military Justice has been determined to be inappropriate.

- (1) Willful violation or disregard of security regulations.
- (2) Intentional unauthorized disclosure to any person of classified information, or of other information disclosure of which is prohibited by law.
- (3) Any deliberate misrepresentation, falsification, or omission of material fact.
- (4) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.
- (5) All other behavior, activities, or associations which tend to show that the member is not reliable or trustworthy.

(Par. 11 d. Proscribed organizations)

A list of organizations designated by The Attorney General is set forth in SR 600-220-11. Membership, past or present, or affiliation or sympathetic association with an organization so designated is but one factor to be considered in making a determination in a particular case. (Emphasis supplied.)

2. Espionage Law
(18 USC 793, 794)

(Pertinent excerpts.)

S. 793

- (a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation ... obtains information ...
(Not applicable)
- (b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains ... any ... writing, or note of anything connected with the national defense, or
- (c) Whoever, for the purpose aforesaid, receives or obtains ... any document, writing, ... as note, of anything connected with the national defense, knowing or having reason to believe at the time he receives or obtains it, ... that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provision of this chapter.
- (d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, ... or notes, of anything connected with the national defense or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates ... to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to an officer or employee entitled to receive it.
- (e) (The same terminology in reference to unauthorized possession.)
- (f) (The same terminology in reference to loss or destruction through gross neglect.)

Penalty: Not more than ten thousand dollars or ten years imprisonment or both.

S. 794

- (a) Whoever, with intent or reason to believe that ... is to be used to the injury of the United States, or to the advantage of a foreign nation, communicates, delivers, or

transmits ... to any foreign government, or to any faction or party or military or naval force within a foreign country ... or to any representative ... or citizen thereof, either directly or indirectly any document, writing, ... note, ... or information relating to national defense shall be punished by death or by imprisonment for any term of years or for life.

3. Executive Order 10450

(Pertinent excerpts. All emphases supplied.)

a. Purpose ("Whereas" clauses):

"Whereas the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

Whereas the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileges to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service."

b. Scope

Section 2:

"The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Section 3 (A):

"The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation."

4. Public Law 733 - 81st Congress

(Pertinent excerpts. All emphases supplied.)

"Notwithstanding the provisions of...any other law, the Secretary of State; Secretary of Commerce; Attorney General; the Secretary of Defense; the Secretary of the Army; the Secretary of the Navy; the Secretary of the Air Force; the Secretary of the Treasury; Atomic Energy Commission; the Chairman, National Security Resources Board; or the Director, National Advisory Committee for Aeronautics, may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee of the Department of State (including the Foreign Service of the United States), Department of Commerce, Department of Justice, Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, Coast Guard, Atomic Energy Commission, National Security Resources Board, or National Advisory Committee for Aeronautics, respectively, or of their several field services: Provided.... The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of such suspended civilian officer or employee whenever he shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final: Provided. further...."

LOYALTY CERTIFICATE FOR PERSONNEL OF THE ARMED FORCES

1. PROVISIONS. The Department of Defense has the authority to establish procedures implementing the national policy relating to loyalty of persons entering on duty with the Armed Forces. This has been determined by proper authority to include restrictions as to certain standards of conduct and membership in, or sympathetic association with, certain organizations.

STANDARDS OF CONDUCT

1. Conduct which may be considered as establishing reasonable grounds for imposing appropriate penalties shall include but is not limited to, one or more of the following:

- Sabotage, espionage, or attempts or preparations therefor, or intimate and sympathetic associations with or voluntary assistance to persons who the subject of investigation has reasonable cause to believe may be spies or saboteurs.
- Treason, sedition, or writings and acts which can reasonably be considered as intended to encourage seditious or treasonable opinions or actions.

(c) Advocacy of revolution or of force or violence to alter the existing constitutional form of government of the United States; advocacy of revolution or of force or violence to bring about economic, political, or social change.

(d) Intentional unauthorized disclosure to any person under circumstances which may indicate disloyalty to the United States, of documents or information of a classified or nonpublic character.

(e) Acting, attempting to act, or knowingly failing to act when such conduct is calculated to serve the interests of another government in preference to the interests of the United States of America.

MEMBERSHIP IN OR ASSOCIATION WITH CERTAIN ORGANIZATIONS

2. Associations which may be considered as establishing reasonable grounds for imposing appropriate penalties include but are not limited to membership in, affiliation with, or sympathetic association with, any foreign or domestic organization, association, movement, group or combination of persons having the following characteristics:

(a) Which practices, seeks to practice, or advocates either:

- Denial, to any person, group of persons, or class of persons within the United States or territory subject to its jurisdiction, of any right or rights which the Federal Constitution guarantees or protects against encroachment by either or both Federal and State Government.

ments when such denial is attempted by force, violence, or intimidation, or:

- Alteration of the existing form of government of the United States or territory subject to its jurisdiction, or of the existing economic, social, or political order within it when such alteration is through or with the aid of force, violence, or intimidation.

(b) Which is disclosed by investigation, or is designated by the Attorney General of the United States to be totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means regardless of practice, advocacy, or nonadvocacy of any of the tenets set forth in 1 (a) and 1 (b) above.

3. Organizations designated by the Attorney General, pursuant to Executive Order 10450, are listed below:

Communist Party, U.S.A., its subdivisions, subsidiaries and affiliates.

Communist Political Association, its subdivisions, subsidiaries and affiliates, including—
Alabama People's Educational Association.
Florida Press and Educational League.
Oklahoma League for Political Education.
People's Educational and Press Association of Texas.
Virginia League for People's Education.

Young Communist League.
Abraham Lincoln Brigade.
Abraham Lincoln School, Chicago, Illinois.
Action Committee to Free Spain Now.
American Association for Reconstruction in Yugoslavia, Inc.

American branch of the Federation of Greek Maritime Unions.

American Christian Nationalist Party.
American Committee for European Workers' Relief.
American Committee for Protection of Foreign Born.
American Committee for the Settlement of Jews in Birobidjan, Inc.

American Committee for Spanish Freedom.
American Committee for Yugoslav Relief, Inc.
American Committee to Survey Labor Conditions in Europe.

American Council for a Democratic Greece, formerly known as the Greek American Council; Greek American Committee for National Unity.

American Council on Soviet Relations.
American Croatian Congress.

American Jewish Labor Council.
American League Against War and Fascism.
American League for Peace and Democracy.

American Lithuanian Workers Literary Association (also known as Amerikos Lietuviu Darbininku Literaturos Draugija).

American National Labor Party.
American National Socialist League.

American National Socialist Party.
American Nationalist Party.

American Patriots, Inc.
American Peace Crusade.

American Peace Mobilization.
American Poles for Peace.

American Polish Labor Council.
American Rescue Ship Mission (a project of the United American Spanish Aid Committee).

American-Russian Fraternal Society.
American-Russian Institute, New York (also known as the American Russian Institute for Cultural Relations with the Soviet Union).

American Russian Institute, Philadelphia.
American Russian Institute of San Francisco.

American Russian Institute of Southern California, Los Angeles.

American Slav Congress.
American Women for Peace.

American Youth Congress.
American Youth for Democracy.

Armenian Progressive League of America.
Associated Klans of America.

Association of Georgia Klans.
Association of German Nationals (Reichsdeutsche Vereinigung).

Association of Lithuanian Workers (also known as Lietuviu Darbininku Susivienijimas).

Ausland-Organization der NSDAP, Overseas Branch of Nazi Party.

Baltimore Forum.
Black Dragon Society.

Boston School for Marxist Studies, Boston, Massachusetts.

Bridges-Roberton-Schmidt Defense Committee.
Bulgarian American People's League of the United States of America.

California Emergency Defense Committee.
California Labor School, Inc., 216 Market Street, San Francisco, California.

Carpato-Russian People's Society.
Central Council of American Women of Croatian Descent (also known as Central Council of American Croatian Women, National Council of Croatian Women).

Central Japanese Association (Beikoku Chuo Nipponjin Kai).

Central Japanese Association of Southern California.
Central Organization of the German-American National Alliance (Deutsche-Amerikanische Einheitsfront).

Cervantes Fraternal Society.
China Welfare Appeal, Inc.

Chopin Cultural Center.
Citizens Committee to Free Earl Browder.

Citizens Committee for Harry Bridges.
Citizens Committee of the Upper West Side (New York City).

Citizens Emergency Defense Conference.
Citizens Protective League.

Civil Rights Congress and its affiliated organizations, including:
Civil Rights Congress for Texas.

Veterans Against Discrimination of Civil Rights Congress of New York.

Columbians.
Comite Coordinador Pro Republica Espanola.

Committee to Aid the Fighting South.
Committee for a Democratic Far Eastern Policy.

Committee for Constitutional and Political Freedom.
Committee for the Defense of the Pittsburgh Six.

Committee for Nationalist Action.
Committee for the Negro in the Arts.

Committee for Peace and Brotherhood Festival in Philadelphia.

Committee for the Protection of the Bill of Rights.
Committee for World Youth Friendship and Cultural Exchange.

Committee to Defend Marie Richardson.
Committee to Uphold the Bill of Rights.

Commonwealth College, Mena, Arkansas.
Connecticut Committee to Aid Victims of the Smith Act.

Connecticut State Youth Conference.
Congress of American Revolutionary Writers.

Council on African Affairs.
Council of Greek Americans.

Council for Jobs, Relief, and Housing.
Council for Pan-American Democracy.

Croatian Benevolent Fraternity.
Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan).

Daily Worker Press Club.
Daniels Defense Committee.

Dante Alighieri Society (Between 1935 and 1940).
Dennis Defense Committee.

Detroit Youth Assembly.

Emergency Conference to Save Spanish Refugees (founding body of the North American Spanish Aid Committee).

Families of the Baltimore Smith Act Victims.
Families of the Smith Act Victims.

Federation of Italian War Veterans in the U.S.A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d'America).

Finnish-American Mutual Aid Society.
Frederick Douglass Educational Center.

Freedom Stage, Inc.
Friends of the New Germany (Freunde des Neuen Deutschlands).

Friends of the Soviet Union.
Garibaldi American Fraternal Society.

George Washington Carver School, New York City.
German-American Bund (Amerika-deutscher Volksbund).

German-American Republican League.
German-American Vocational League (Deutsche-Amerikanische Berufsgemeinschaft).

Harlem Trade Union Council.
Hawaii Civil Liberties Committee.

Heimusha Kai, also known as Nokubei Heicki Gimusha Kai, Zaipei Nihonjin, Heijaku Gimusha Kai and Zaipei Heimusha Kai (Japanese Residing in America Military Conscription Association).

Hellenic-American Brotherhood.
Hinode Kai (Imperial Japanese Reservists).

Hinomaru Kai (Rising Sun Flag Society—a group of Japanese War Veterans).

Hokubei Zaigo Shoke Dan (North American Reserve Officers Association).

Hollywood Writers Mobilization for Defense.
Hungarian-American Council for Democracy.

Hungarian Brotherhood.
Independent Socialist League.

Industrial Workers of the World.
International Labor Defense.

International Workers Order, its subdivisions, subsidiaries and affiliates.

Japanese Association of America.
Japanese Overseas Central Society (Kaigai Dobo Chuo Kai).

Japanese Overseas Convention, Tokyo, Japan, 1940.
Japanese Protective Association (Recruiting Organization).

Jefferson School of Social Science, New York City.
Jewish Culture Society.

Jewish People's Committee.
Jewish People's Fraternal Order.

Ikyoku Lin kai (The Committee for the Crisis).
Joint Anti-Fascist Refugee Committee.

Joint Council of Progressive Italian-Americans, Inc.
Joseph Weydemeyer School of Social Science, St. Louis, Missouri.

Kibei Seinen Kai (Association of U.S. citizens of Japanese ancestry who have returned to America after studying in Japan).

Knights of the White Camellia.
Ku Klux Klan.

Kyffhaeuser, also known as Kyffhaeuser League (Kyffhaeuser Bund), Kyffhaeuser Fellowship (Kyffhaeuser Kameradschaft).

Kyffhaeuser War Relief (Kyffhaeuser Kriegsbilfswerk).

Labor Council for Negro Rights.
Labor Research Association, Inc.
Labor Youth League.
League of American Writers.
Lictor Society (*Italian Black Shirts*).
Macedonian-American People's League.
Mario Morgantini Circle.
Maritime Labor Committee to Defend Al Lannon.
Massachusetts Minute Women for Peace.
Maurice Braverman Defense Committee.
Michigan Civil Rights Federation.
Michigan School of Social Science.
Nanka Teikoku Gunyudan (*Imperial Military Friends Group or Southern California War Veterans*).
National Association of Mexican Americans (*also known as Asociacion Nacional Mexico-Americana*).
National Blue Star Mothers of America (not to be confused with the Blue Star Mothers of America organized in February 1942).
National Committee for the Defense of Political Prisoners.
National Committee for Freedom of the Press.
National Committee to Win the Peace.
National Conference on American Policy in China and the Far East (*a Conference called by the Committee for a Democratic Far Eastern Policy*).
National Council of Americans of Croatian Descent.
National Council of American-Soviet Friendship.
National Federation for Constitutional Liberties.
National Labor Conference for Peace.
National Negro Congress.
National Negro Labor Council.
Nationalist Action League.
Nationalist Party of Puerto Rico.
Nature Friends of America (*Since 1935*).
Negro Labor Victory Committee.
New Committee for Publications.
Nichibei Kogyo Kaisha (*The Great Fujii Theatre*).
North American Committee to Aid Spanish Democracy.
North American Spanish Aid Committee.
North Philadelphia Forum.

Northwest Japanese Association.
Ohio School of Social Sciences.
Oklahoma Committee to Defend Political Prisoners.
Original Southern Klans, Incorporated.
Pacific Northwest Labor School, Seattle, Washington.
Palo Alto Peace Club.
Partido del Pueblo of Panama (*operating in the Canal Zone*).
Peace Information Center.
Peace Movement of Ethiopia.
People's Drama, Inc.
People's Educational Association (*Incorporated under name Los Angeles Educational Association, Inc.*), also known as People's Educational Center.
People's University, People's School.
People's Institute of Applied Religion.
People's Radio Foundation, Inc.
Philadelphia Labor Committee for Negro Rights.
Philadelphia School of Social Science and Art.
Photo League (*New York City*).
Political Prisoners' Welfare Committee.
Polonia Society of the IWO.
Progressive German-Americans, also known as Progressive German-Americans of Chicago.
Proletarian Party of America.
Protestant War Veterans of the United States, Inc.
Provisional Committee of Citizens for Peace, Southwest Area.
Puertorriquenos Unidos (*Puerto Ricans United*).
Quad City Committee for Peace.
Revolutionary Workers League.
Romanian-American Fraternal Society.
Russian American Society, Inc.
Sakura Kai (*Patriotic Society, or Cherry Association, composed of veterans of Russo-Japanese War*).
Samuel Adams School, Boston, Mass.
Santa Barbara Peace Forum.
Schappes Defense Committee.
Schneiderman-Darcy Defense Committee.
School of Jewish Studies, New York City.
Seattle Labor School, Seattle, Washington.
Serbian-American Fraternal Society.
Serbian Vidovdan Council.

Shinto Temples.
Silver Shirt Legion of America.
Slavic Council of Southern California.
Slovak Workers Society.
Slovenian-American National Council.
Socialist Workers Party, including American Committee for European Workers' Relief.
Socialist Youth League.
Sokoku Kai (*Fatherland Society*).
Southern Negro Youth Congress.
Suiko Sha (*Reverse Officers Association, Los Angeles*).
Tom Paine School of Social Science, Philadelphia, Pennsylvania.
Tom Paine School of Westchester, New York.
Tri-State Negro Trade Union Council.
Ukrainian-American Fraternal Union.
Union of American Croats.
Union of New York Veterans.
United American Spanish Aid Committee.
United Committee of Jewish Societies and Landsmanschaft Federations, also known as Coordination Committee of Jewish Landsmanschaften and Fraternal Organizations.
United Committee of South Slavic Americans.
United Harlem Tenants and Consumers Organization.
United May Day Committee.
United Negro and Allied Veterans of America.
Veterans of the Abraham Lincoln Brigade.
Voice of Freedom Committee.
Walt Whitman School of Social Science, Newark, New Jersey.
Washington Bookshop Association.
Washington Committee to Defend the Bill of Rights.
Washington Committee for Democratic Action.
Washington Commonwealth Federation.
Washington Pension Union.
Wisconsin Conference on Social Legislation.
Workers Alliance (*since April 1936*).
Workers Party (*including Socialist Youth League*).
Yiddisher Kultur Farband.
Yugoslav-American Cooperative Home, Inc.
Yugoslav Seamen's Club, Inc.

THE FOLLOWING ADDITIONS TO AND DELETIONS FROM THE ABOVE LIST HAVE BEEN MADE BY SUBSEQUENT EXECUTIVE ORDERS AND LETTERS:

II. DECLARATION. (*Concealment of, misrepresentation as to, or failure to divulge in full, conduct or associations of the character set forth in the provisions at the time of execution of this certificate may constitute grounds for court martial, discharge, separation, or other disposition of personnel. Penalties for making a false statement may be very severe. If Federal Constitutional privilege against self-crimination, i. e., the making of a statement which will expose you to criminal trial, is claimed about all or any part of any conduct, membership, or association in question, you may so claim under Remarks below, "Federal Constitutional privilege is claimed" or "Federal Constitutional privilege is claimed as to . . ." describing the specific part of any conduct, membership, or association about which claim is made.*)

CERTIFICATION

I certify, as regards the standards of conduct, or membership in or association with, certain organizations, that:

1. I have read the provisions applying to standards of conduct and membership in or association with certain organizations and I understand them.
2. If I have engaged in any such conduct, I have so indicated the nature thereof under Remarks below.
3. I have entered under Remarks below, the name(s) of the organization(s) from the above list of which I am or have been a member, or by which I am or have been employed, or which I have attended or been present at, or engaged in, organizational or social activities or activities which they sponsored, or for which I have sold, given away or distributed written, printed, or otherwise recorded matter published by them, or with which I have been identified or associated in some other manner.
4. If I have not engaged in any such conduct, or have not been associated in any manner with listed organizations, or have never been a member or participated in the activities of any pro-communist, pro-Nazi, or pro-Fascist organizations in foreign countries, I have so indicated by writing "NONE" or "None to my knowledge" under Remarks below.
5. I understand that if what I state below is found to be incorrect, incomplete, or misleading in any important particular, I may be subject to prosecution and punishment under the appropriate laws of the United States.
6. I understand the meaning of the statements made in the certifications above.

REMARKS (*Use the space provided below and attach additional sheets, if necessary, for a full detailed statement. If associated with any of listed organizations, specify nature and extent of association with each including dates, places, and credentials now or formerly held*)

TYPED FULL NAME OF PERSON MAKING CERTIFICATION

SERVICE NO. (*If any*)

SIGNATURE OF PERSON MAKING CERTIFICATION

GIVEN UNDER MY HAND THIS

TYPED NAME, GRADE AND ORGANIZATION

Back of Loyalty Certificate DD98

SING. OFFICER

(Actual size)

VETERANS' RIGHTS AND BENEFITS *(Attachment to DD Form 214)*

The DD Form 214 to which this supplement is attached is used by the individual in making claim for rights and benefits provided by Federal and State veterans' legislation. It is, therefore, an important document which should be carefully

protected. The principal benefits to which the individual may be entitled and the appropriate administering agencies are indicated below:

EMPLOYMENT AND REEMPLOYMENT

EMPLOYMENT

Job counseling and employment service: Provided through local offices of State Employment Services in cooperation with UNITED STATES EMPLOYMENT SERVICE.

CIVIL SERVICE PREFERENCE—FEDERAL AND STATE

In Federal Service: Experience credits for active service, additional points to ratings earned in exams, and precedence in appointment, registers, etc. Wives and mothers of service-connected disabled veterans also eligible under some circumstances. Honorable separation required. State service benefit varies. *(For Federal preference see*

local office, U. S. CIVIL SERVICE COMMISSION, U. S. POST OFFICE or other GOVERNMENT AGENCY. For State preference see the STATE CIVIL SERVICE COMMISSION or STATE GOVERNMENT AGENCY.)

REEMPLOYMENT RIGHTS

Reinstatement in old job or job of like seniority, status, and pay. Must have left permanent job with private employer or the U. S. Government and have had satisfactory military or naval service. Ability of employer to reemploy, nature and date of entrance into

active duty, date of separation, etc., are factors in determining eligibility and extent of benefit. DEADLINE: Claim for reinstatement must be made to employer within 90 days after separation. *(See local STATE EMPLOYMENT office.)*

UNEMPLOYMENT COMPENSATION

Payments of \$26 per week of unemployment *(not to exceed 26 weeks)* occurring subsequent to discharge. Not payable for any week of unemployment covered by mustering-out pay *(for 30, 60, or 90 days after separation depending upon whether the veteran receives MOP of \$100, \$200, or \$300)*. Separation under conditions other than

dishonorable. Determination of entitlement made by State agency in accordance with applicable State laws. DEADLINE: No compensation payable for any week of unemployment commencing more than 5 years after date to be subsequently set as end of the Korean Conflict period. *(See local STATE EMPLOYMENT SERVICE office.)*

EDUCATION AND TRAINING

VETERANS' READJUSTMENT ASSISTANCE ACT OF 1952 *(For veterans of the Korean service period)*

Monthly allowances paid directly to veteran to help meet cost of education or training. Such payments may be applied to 1½ days education or training for each day of active service during period commencing 27 June 1950 and a date yet to be determined by Congress. At least 90 days active service, part of which was within the foregoing dates or if less service, separation for service-connected disability. Maximum compensable period 36 months. Separation must be under conditions other than dishonorable. DEADLINE on

commencing education: 20 August 1954 or within 2 years after separation from active service, whichever is later. Must be completed 7 years following separation or 7 years after the end of the Korean period, whichever is earlier. Return to active duty establishes date of separation for deadline purposes as date of service from last period of active service commenced during Korean period. *(See VETERANS ADMINISTRATION local office.)*

SERVICEMEN'S READJUSTMENT ASSISTANCE ACT OF 1944 *(G. I. Bill for veterans of World War II)*

Training expenses paid, within limitations, for 1 year plus a period of time equal to the veteran's WW II service up to maximum of 4 years. Separation from WW II service for service-connected disability or service of at least 90 days, some part of which was during WW II. Separation must be under conditions other than dishonor-

able. DEADLINE on commencing education: 4 years from date of separation. DEADLINE for resuming "interrupted" education: within a "reasonable" time following separation. Generally no education furnished after 25 July 1956. *(See VETERANS ADMINISTRATION local office.)*

DUAL STATUS VETERANS

Veterans eligible for the benefits of both educational programs may choose or combine the benefits of either bill but under no circumstances may the amount of educational benefits exceed 48 months.

Veteran faced with dual eligibility should consult VA officials before making final determination.

INSURANCE

(A) Permanent plan premium must continue to be paid when due, or within 31 days thereafter, or insurance will lapse. (B) Term insurance not under waiver same as (A) above. (C) Term insurance under waiver—premium payment must be resumed within 120 days after separation. Free indemnity coverage provided during active service expires 120 days after separation. In order to be eligible for new postservice insurance required action must be taken within the 120-day period. Forward premiums on NSLI and applications

and premiums on new postservice insurance to Veterans Administration District Office having jurisdiction over the area in which you reside. *(See VA Pamphlet 9-3, Rev. May 1952.)* Forward premiums on USGLI to Veterans Administration, Washington 25, D. C. When paying premiums give full name, address, Service Number, Policy Number(s), Branch of Service, date of separation. Contact nearest VA office for information concerning Government Life Insurance.

LOAN GUARANTY

Guaranty of loan for purchase or construction of home, farm, or business property or farm or business equipment. In rare cases and for a limited time direct loan of farm house loans may be secured from V. A. in areas where private capital is unavailable. Entitlement based on service since 27 June 1950 cancels any unused benefit based

on WW II service. Entitlement is also reduced by the amount of WW II benefits used. DEADLINE: Guaranty available within 10 years following end of Korean period as later determined. *(See VETERANS ADMINISTRATION local office.)*

HOSPITALIZATION, OUT-PATIENT MEDICAL AND DENTAL TREATMENT

HOSPITALIZATION

Government hospitalization. Provided for veteran with service-connected disability and for veteran with non-service-connected disability who had WW II service or service since 27 June 1950 and is unable

to meet cost of hospitalization. Separation must be under other than dishonorable conditions. (See *VETERANS ADMINISTRATION local office.*)

OUT-PATIENT MEDICAL AND DENTAL TREATMENT

Treatment provided for service-connected medical and dental conditions. Separation must be under other than dishonorable conditions. (See *VETERANS ADMINISTRATION local office.*)

DISABILITY COMPENSATION AND PENSION

COMPENSATION

Monthly payments based on percentage of disability, nature of disability, and number of dependents. Based on disease or injury incurred in or aggravated by active service in line of duty. Separation must be under conditions other than dishonorable. DEADLINE:

Claims may be filed at any time but only claims filed within 1 year of separation permit retroactive payment to date of separation. (See *VETERANS ADMINISTRATION local office.*)

PENSION

Monthly payments based on permanent and total non-service-connected disability. Advanced age may be considered as a disability factor. Includes amount for regular aid and attendance where necessary. Eligibility limited to veterans with wartime service or service since 27 June 1950 of 90 days duration unless discharge was for physical

disability. Separation must be under conditions other than dishonorable. Income from other sources beyond certain amounts constitutes a bar to payment of pensions. DEADLINE: No deadline. (See *VETERANS ADMINISTRATION local office.*)

VOCATIONAL REHABILITATION

Necessary education or training expenses paid, up to 4 years if necessary, toward job objective. Monthly subsistence allowance also payable. Must have compensable disability incurred in or aggravated by active service since 27 June 1950, have been separated under con-

ditions other than dishonorable, and be in need of vocational training to overcome handicap of such disability. DEADLINE: Education or training must be completed within 9 years from end of Korean period. (See *VETERANS ADMINISTRATION local office.*)

SPECIAL AIDS FOR DISABLED

Prosthetic appliances, seeing-eye dogs, mechanical and electronic equipment (*hearing aids*), allowance for purchase of automobiles, and special housing provided under certain circumstances to service-

connected disabled persons. (See *VETERANS ADMINISTRATION local office.*)

STATE VETERANS' BENEFITS

Benefits such as bonuses, exemption from taxes and license fees, educational assistance, and counseling in veterans' claims matters. (See *the STATE VETERANS COMMISSION office.*)

(Back of Veterans' Rights and Benefits)

(Form DD 214-1)

100
44987-6-3

Army Military Personnel Security Cases Involving Draftees
under the
Universal Military Training and Service Act

W.C. [unclear]
J.C. [unclear]
C. [unclear]
F.D. [unclear]

APPENDIX C
to
THE DRAFTEE AND INTERNAL SECURITY

9/1/53
Memo Rel. sent to Rowland Watts
BY: [unclear]

by
Rowland Watts

ENCLOSURE

100-391697-164

APPENDIX C

Army Military Personnel Security Cases Involving Draftees
under the
Universal Military Training and Service Act

- - - - -

An integral part
of
THE DRAFTEE AND INTERNAL SECURITY

by
Rowland Watts

WORKERS DEFENSE LEAGUE

112 East 19 Street
New York

Case No. 1

While this case is still pending and counsel was not willing to make the complete file available at this time, he did authorize the use in this study of one allegation. This allegation is:

"You have a father who is reported to have said that if communism offered anything good he would accept it."

Case No. 2

Inducted: January, 1951

Loyalty Certificate: DD98A was not given to this man for execution.

Separated from active duty: April, 1951 for hardship.

Honorable

Separation and assignment to Army Reserves.

Letter of Allegations: October, 1951

- a. You were a member of American Youth for Democracy from _____ to _____.
- b. In _____, you attended the California Labor School.
- c. In _____, you were a member of the Communist Party.
- d. In _____, you received favorable publicity in the Daily Peoples World.
- e. In _____, you were a member of the International Workers Order.
- f. In _____, you attended the Youth for Civil Rights Conference. Several Communist front organizations were represented at this meeting.
- g. In _____, you attended a meeting of an organization which closely follows the Communist Party line.
- h. In _____, you served in an official capacity in an organization infiltrated and dominated by members of the Communist Party.
- i. In _____, you were an active member of the Labor Youth League.

Answer:

He was given 30 days in which to file a written answer.
He asked for a hearing but this was denied him.

Discharge: December, 1951 - General Discharge Under Honorable Conditions.

Inducted: July, 1951

Loyalty Certificate DD 98: Certificate DD 98A, listing the

Attorney General's organizations, reportedly, was not used in this case.

Individual set forth voluntarily a full statement concerning his past organizations and associations.

Military Career:

When he completed his basic training he was asked to apply for CIC (Counter Intelligence Corps). He submitted a five page statement containing a detailed report of his past political activities. His application for CIC was destroyed. He was then transferred to another camp where he was asked to apply for leadership school. He refused to do this and asked to be assigned to combat duty. He was assigned to Korea. In Korea he was asked to go into Intelligence. He told the Colonel the whole story of his previous political activities but was nevertheless assigned to CBI (Counter Battery Intelligence). In June, 1952 he was given a "battle field commission." He again volunteered full information and was assigned to labor crews and other routine jobs because he heard there was a fear that he might be "going north" (i. e., to the Communist forces in North Korea.) He volunteered and was assigned to a gun crew which was not only a very dangerous assignment but a very sensitive one of responsibility.

Separation: April, 1953 (Four months in advance of normal separation)

Honorable separation from active duty and assignment to Army Reserves.

Sometime after he had returned to civilian life he was approached by an investigative officer on several occasions and an effort was made to get him to return into membership in some of the organizations with which he had previously been associated for the purpose of acting as an informant to the government. While he did in fact supply the government with some information, he did not return into membership and later broke off all contact with the investigative agency.

Letter of Allegations: December, 1954

- a. You admitted membership from ____ to ____ (a nine month period occurring over five years prior to induction) in the Socialist Workers Party, an organization cited as subversive and Communist by the Attorney General of the United States.
- b. You admitted membership from ____ to ____ (a period terminating several years prior to induction) in the Workers Party, an organization cited as subversive and Communist by the Attorney General of the United States.
- c. You admitted membership from ____ to ____ (a three month period occurring over seven years prior to induction) in American Youth for Democracy, an organization cited as Communist by the Attorney General of the United States.

- d. You admitted membership from ____ to ____ (a period between (a) and (e) above) and in ____ (a period three years prior to induction) were listed as a member of the Socialist Youth League, an organization cited as subversive and Communist by the Attorney General of the United States.
- e. You were reported to be on the mailing list in ____ of Labor Action, the official organ of the Workers Party.

Answer: January, 1955

He filed a written answer setting forth the full history of his activities and his military career. He requested a hearing.

Hearing: February, 1955

Individual consulted with civilian counsel who in turn consulted with assigned military defense counsel. Civilian counsel recommended that man continue with military counsel which he did. Defense introduced a number of affidavits from military superiors including a General and a Major. The primary defense, however, was the individual's own testimony which was detailed as to his entire career both civilian and military, including his cooperation with the investigative agency. During the course of the hearing a teletype communication was received by the Board from the investigative agency. Its contents were not divulged to the defense but the individual believes that this was a key factor in his eventual clearance.

Clearance: April, 1955

Individual received a letter from the Adjutant General in Washington, D.C. which stated that "after a careful review of the circumstances involved in your case, it has been determined that you are eligible for retention in the Army Reserve."

Case No. 4

Inducted: August, 1951, into Marine Corps

While this man was inducted into the Marine Corps rather than into the Army and the procedures were therefore somewhat different, the basic criteria is the same.

Loyalty Certificate: Not in use at this time.

In September, 1952 he received a letter which alleged "Conduct or associations casting doubt upon his loyalty to the United States." This letter was issued in compliance with the Marine Corps general order 101.

Allegations: Instead of receiving a letter of allegations,

he received a narrative statement of facts disclosed in the investigation. This statement alleged that he had been a member of the Communist Party of _____ state in _____, a member of the Civil Rights Congress in _____, a subscriber to the Daily Worker from _____ to _____, a member of the Progressive Party of Missouri in _____ which is reported to have been under the complete domination and control of the Communist Party, and reliably reported to have indicated that he was being cautious in his Communist Party activities until he received a discharge from the Marine Corps.

His counsel challenged the jurisdiction of the Board and the make-up of the Board.

In October, 1952 he was informed by a letter that his

challenge was invalid but that a new Board would be set up and requested counsel to submit an outline of the contemplated defense. This counsel refused to do.

Discharge: February, 1953 - Undesirable

The separation papers state "Discharge by reason of being undesirable, misconduct (perpetration of a fraudulent enlistment), and as directed by the Board of Review to review cases of alleged conduct or associations casting doubt upon loyalty to the United States."

Case No. 5

Inducted: 1942, with subsequent voluntary enlistments in 1946, 1949 and 1952.

Loyalty Certificate DD 98 and DD 98A: 1952

These loyalty certificates had not been in use at previous induction or enlistments therefore they have not been previously executed by the individual. He answered "none" to the pertinent questions.

Military Record:

Individual had served over 13 years in the Army, expecting to make it a life-time career. His record was excellent throughout and he has 3 Honorable discharges. At the time of his last separation he was a Staff Sergeant.

Investigation and Interview

In the Fall of 1954, the individual was interviewed by special agents concerning alleged associations in the early 1930's. He refused to supply any information. He was called for a formal "interview" in October, 1954. He was informed that this interview was confidential and that he could not divulge to anyone the fact that it had taken place. He was informed that he was entitled to be represented by counsel and that therefore Lieutenant _____ had been assigned to him as his counsel. After hasty consultation with his assigned "counsel," a graduate of law school who had no experience in the actual practice of law, he decided that he would stand on the Fifth Amendment and the 31st Article of the Uniform Code of Military Justice on all questions rather than get in-

volved in answering some and not others. Assigned counsel made no effort whatsoever to guide him in answering general questions that would have been stronger for him to have answered.

Discharge: February, 1955 (at the expiration of his term of service) "character of discharge to be determined." Individual received no mustering out pay, accumulated leave pay, nor travel allowance although he had been last enlisted at San Francisco and was discharged in Florida.

Hearing:

In April, 1955 he was informed that he could have a hearing, if he wished one, to resolve the security question and to determine the character of discharge which is to be issued. He requested a hearing within 15 days after receiving allegations of derogatory information or a questionnaire concerning the matters to be considered by the Board of Officers. No answer has been received and no hearing date has been set by late July, 1955.

Comment:

The authority of the military agency to conduct a hearing to determine the character of discharge after a man has been actually discharged is certainly opened to serious question. As this individual had voluntarily enlisted after completing his inducted service he is not subject to the provisions of service in the Army Reserve.

Inducted: June, 1952

Loyalty Certificates DD 98 and DD 98A: Several days after induction.

He signed "none" in answer to the pertinent questions on these forms. However, he later stated that he had no recollection of ever having had the forms submitted to him and it is probable that they were given to him during the routine processing procedures.

Letter of Allegations: April, 1954 while in Korea

- a. From ____ to ____, you were a member of the Communist Party.
- b. In ____, you were a squad captain of the Communist Party in ____, Washington.
- c. From ____ to ____, you attended numerous meetings of the Communist Party.
- d. In ____, you subscribed to People's World, a west coast publication of the Communist Party.
- e. On ____, you were scheduled to be a speaker at an educational class of the Communist Party.
- f. In ____, you were active in and attended meetings of the Labor Youth League, an organization cited by the Attorney General of the United States as subversive and Communist.
- g. In ____ and ____, you attended meetings of the Independent Socialist League, an organization cited by the Attorney General of the United States as seeking to alter the form of government of the United States by unconstitutional means.

- h. In _____, you distributed Monthly Review, a magazine published by the Independent Socialist League.
- i. In _____, you were a member of the Socialist Workers Party, an organization cited by the Attorney General of the United States as subversive, Communist, and seeking to alter the form of government of the United States by unconstitutional means.
- j. In _____, while on leave from the Army, attended a meeting of the Socialist Workers Party.
- k. In _____, you attended a meeting of the American Committee for the Protection of the Foreign Born, an organization cited by the Attorney General of the United States as subversive and Communist.
- l. In _____, you attended a meeting of the Civil Rights Congress, an organization cited by the Attorney General of the United States as subversive and Communist.

Answer:

Under the regulations in force at that time, he was given seven days in which to answer with no right of hearing. He consulted an officer in Korea who told him that it didn't make any difference whether he answered or not because if any of the allegations were true he would receive an Undesirable Discharge. He therefore did not submit an answer.

Discharge: May, 1954 (5 days before normal time of discharge) -
Undesirable.

Appeal to Army Discharge Review Board: January, 1955

No Hearing date has been scheduled.

Inducted: June, 1952

Loyalty Certificate DD 98 and DD 98A:

Answered "none." He later volunteered information to a Security Officer concerning association with two of the listed organizations. He requested permission to correct his original form or submit a new one but, while he was assured that his request would be forwarded to the proper authorities, no official action was taken and no new form was ever submitted to him. He states that at the time of signing the initial form he was on sick leave and that he was rushed through along with a number of other people and was told that if he was not a Communist he should answer "none".

Military Career: After completing basic training, the individual successfully completed the microwave repair course at Fort Monmouth and was assigned to White Sands, New Mexico. At White Sands, he volunteered the information concerning his previous organizational associations and, because it was necessary for everyone to receive classified clearance in the project to which he was assigned his Commanding Officer did not submit his name for clearance and he was returned to Monmouth where he was made an instructor in the Signal School. He remained in this position throughout the investigation and up until the day prior to the date of his discharge.

Letter of Allegations: November, 1953.

- a. In ____ and ____, you were an active participating member of the Independent Socialist League, which is cited by the Attorney General of the United States as subversive.
- b. In ____, ____ and ____, you were actively affiliated with the Socialist Youth League, which is cited by the Attorney General of the United States as subversive and Communist.
- c. In ____ and ____, you were a member and officer of the Politics Club, which is reported to have been formed by the Workers Party and the Socialist Workers Party. The Socialist Workers Party is cited by the Attorney General of the United States as a subversive and Communist organization and the Workers Party is cited by the Attorney General of the United States as subversive.
- d. In ____, you subscribed to Labor Action, which is cited by the Attorney General of the United States as the official organ of the Independent Socialist League.
- e. In ____, you subscribed to The Militant, which is reported to be the official weekly newspaper of the Socialist Workers Party.
- f. You have a wife _____, who was a member and officer of the Socialist Youth League.
- g. You resided with an individual who was an officer of the Socialist League.

Answer: February, 1954 (30 days was the time allowed in which to submit a written answer under the then existing regulations, no hearing being accorded. This period was extended by request.)

In answer to allegations (a) and (b) he admitted membership in the named organizations in the period specified prior to his induction. He denied knowledge or belief that these organizations were subversive, stated on positive knowledge that they were not communist, and pointed out that they had never been accorded a hearing before the Attorney General although the courts had ruled that the listing without a hearing was invalid and although the organizations had repeatedly pressed for a hearing. Answering allegation (c), he admitted membership in the Politics Club at the University of Chicago denied that the Club was formed by the Workers Party and the Socialist Workers Party, pointed out that the Politics Club was a recognized student activity at the University and had never been cited by any official body as being subversive or communist but that on the contrary one of its primary purposes was to oppose Communists. Allegations (d) and (e), he admitted that he had subscribed to both publications although he was not sure of the year. He pointed out that he had subscribed to many other publications and enumerated them, including the New York Times, the New Yorker, Partisan Review, etc. He stated further that he considered questions concerning his reading habits "to be impertinent." Allegation (f), he refused to answer any questions concerning his wife as he could see "no justification legal, moral, or otherwise" for being asked to discuss her beliefs. Allegation (g), he asked for elaboration as he had lived with numerous people while in Chicago and

was unfamiliar with the organization "Socialist League".

He submitted nine affidavits from faculty advisors and prominent writers and lecturers in support of his contentions concerning the enumerated organizations.

Clearance - April 1, 1954

In a letter from the Adjutant General, the individual was informed that "the allegations in your case and your reply thereto have been reviewed in the Department of the Army. It has been determined that you will be retained in the Service in your present grade, that you will not be promoted and that upon completion of your term of service you will be discharged with a type of discharge appropriate to the character of service you have rendered as of the date you are eligible for separation."

The individual at that time was a Corporal and was eligible for promotion to Sergeant. Despite the indicated restriction upon promotion, both the individual and his counsel assumed that he had satisfactorily cleared himself of allegations of being a "subversive".

Discharge - June 1954 (approximately 11 days in advance of his normal date of separation) - Undesirable.

In mid-May, 1954 the individual received a letter of appreciation from his superior in the Signal School which stated in part, "you have displayed and exercised such qualities and abilities as loyalty, leadership, dependability, earnestness, and other attributes of an exemplary soldier and conscientious worker."

On the day preceding his actual discharge, the individual was informed that he would receive a security discharge three days hence. He immediately called his attorney long distance and his attorney assured him that there must be some mistake, that he would take the matter up immediately in Washington, and have all action suspended pending investigation and clarification. Within one-half hour of the time the individual had spoken to his attorney, he was called in and told that he was being processed out the same day; because the base was unable to complete the processing out ceremonies that day, he was given his discharge the following day. However, on that day he was given a separation paper which had not been completed in full. On it he had the following ratings: "character - excellent, efficiency - excellent." The next day along with his discharge he was given a new separation paper where the character and efficiency ratings had been changed to, character - poor, efficiency - satisfactory.

Strong letters of protest of the discharge and irregularities of the procedures were sent to the Secretary of the Army and the Adjutant General by the individual's counsel, Norman Thomas, and others. The case received some publicity in the press. At the suggestion of the Assistant Secretary of the Army, a formal appeal was filed with the Army Discharge Review Board at the beginning of July, 1954. This appeal incorporated the previous answer and affidavits, submitted eight additional affidavits, a photostat of the separation paper originally given the individual, a photostat of the letter of appreciation, a photostat of his previous "clearance", and a strong summary statement of the man's Army career and the incidents leading up

to his discharge. A hearing was requested.

One week later the Assistant Secretary of the Army wrote to Norman Thomas (but not to the individual's counsel) that:

"after careful consideration of all of the facts in the case, the (Army Discharge Review) Board determined that Mr. _____ should have been awarded a General Discharge, a discharge under honorable conditions. This decision was furnished to me only yesterday. The Adjutant General will now, in accordance with established procedure, take immediate action to recover the Undesirable Discharge from Mr. _____. Upon its receipt it will be destroyed and a General Discharge will be issued. By this procedure no stigma of the original discharge will remain with Mr. _____."

About one month later a General Discharge under honorable conditions was received.

Second Appeal: September, 1954

An appeal to the Army Discharge Review Board from the General Discharge was taken. In the application for review was included the original answer to the allegations, the first appeal to the Army Discharge Review Board, and all of the affidavits and exhibits submitted previously. One additional affidavit was submitted. The individual submitted an additional personal statement setting forth his own and his family background and emphasizing the importance of clearance not only to him but to his entire family and the careers of his brother and sister. He stated while he still felt that his wife's political activities and associations had nothing to do with his own record of service in the Army he stated that "at her specific request I state that this allegation is wholly untrue." Further evidence of the high calibre of the service he had rendered to the Army was also submitted.

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A hearing was requested. In a covering letter, counsel requested that this application for review be considered as a supplement to the preceding application in order that there would not be further delay in the hearing.

Hearing before Army Discharge Review Board: December, 1954

The hearing was conducted in the Pentagon. The individual appeared in person, submitted two additional affidavits and had as witnesses on his behalf, Norman Thomas and Prof. David Reisman of the University of Chicago.

Counsel in his argument emphasized the irregularities of the procedures used in individual's case, the fact that he had never received a security hearing of any kind, the fact that the Army Discharge Review Board was not a proper agency to conduct such a hearing in view of the fact that it was not bound by the security criteria, the fact that the pre-induction activities had no bearing upon the character of the service that had been rendered in the Army and that in any event the pre-induction activities were not of a subversive nature.

Several months elapsed and counsel inquired concerning delay in decision in March, 1955. In April, 1955 a report of the Army Discharge Review Board dated January, 1955 was received setting forth that the Review Board saw no reason for disturbing the previous decision to accord the individual a General Discharge under honorable conditions; therefore, this General Discharge was being returned to him.

Further Action

An appeal to the Board for the correction of military records was made in late April, 1955. No decision had been received by late July, 1955.

Inducted: Summer 1952

Loyalty Certificate DD 98:

Signed "no" in answer to the pertinent questions.

He later testified at his hearing that he did not know how he had signed until he saw the file "this morning". He stated, "we were all lined up and they had these sheets of paper. The sergeant said if you are not a Communist put down none and I did." On cross-examination he stated, "I didn't have a chance to read it. We were rushed through."

Separation from Active Duty: Summer 1954

"Honorable Separation from Active Duty and Assignment to Army Reserves."

The individual served actively in the Army Reserve as a Corporal.

Letter of Allegations: November, 1954

- a. You were a member of the Independent Socialist League, an organization which has been cited as subversive and Communist by the Attorney General of the United States.
- b. You were a member of the Socialist Youth League, an organization which has been cited as subversive and Communist by the Attorney General of the United States.
- c. You were a member of the Labor Youth League, an organization which has been cited as Communist by the Attorney General of the United States.

- d. Your parents were once prominent in the Young Communist League.
- e. You have a wife, _____, who was an active member of the Independent Socialist League; whose address book contained names of several known members of the Communist Party, and whose apartment contained numerous communist publications including the Communist Manifesto.
- f. You have a grand-father, _____, who attended meetings of the Communist Party regularly.
- g. You wrote a number of articles for a newspaper published by the Independent Socialist League.

Interviews:

The individual had two interviews with Army Security officers. At the first interview two civilians were present and were believed to be S-2 agents. In the course of the interview, one of them asked him, "did you know that there were many Jews at the University of _____ (the school the individual attended)?" Another question was asked to this affect: "why did you, a white person, belong to the National Association for the Advancement of Colored People?"

In the second interview he was asked to take a lie detector test. This he did. At the subsequent hearing his counsel requested that the results of the lie detector test be produced and introduced into evidence. This request was denied.

Pre-Hearing Motions:

Defense filed motions for more definite and certain dates concerning the allegations and for making the service record of the individual available to defense prior to the hearing. The first

motion for particulars was denied. The second motion was granted in that counsel was informed that the service record would be made available two hours prior to the hearing for inspection by counsel in the hearing room.

Hearing: January, 1955

At the outset of the hearing, counsel proffered testimony to show that the Independent Socialist League and the Socialist Youth League were not in fact subversive. The President of the Board stated, "We have no authority to rule whether they are subversive or not." Counsel cited par. 11 b (4) which states; "... (An organization ... officially designated by the Attorney General of the United States to be ... Communist or subversive ... shall be presumed the character thus designated until the contrary be established)," and argued that the Board had the authority to establish the contrary. The President adjourned the hearing and at a later date, without conceding this right, permitted introduction of the evidence that the counsel wished to present. No public determination was made of this question, however.

By expert witnesses, affidavits, and exposition by defense counsel, an effort was made to establish that the ISL and the SYL were not subversive, were clearly anti-Communist, and were the type of Socialists who were prosecuted by the Communists in Russia and elsewhere. One of the Board members asked one of the ISL witnesses, "Do you believe your group uses the word, 'capitalism,' more than the Communist Party uses the word?"

Twelve general character and loyalty affidavits were submitted by the individual and he testified in his own behalf. In direct answer to the allegations he admitted (a) and (b) but maintained that membership in both organizations had terminated prior to his induction and that, in any event, neither of them was subversive or Communist. In reference to allegation (c) both he and another witness stated that it was incredible that anyone could belong to both the Labor Youth League and the Socialist Youth League as they were diametrically and bitterly opposed to each other. He admitted however, that at one time he had attended several public meetings of the LYL. He denied knowledge of the truth or falsity of allegation (d) explaining that his parents had been divorced when he was six months old. He did state that he knew that his mother was a very active anti-Communist. Concerning allegation (e), he stated that he and his wife were separated, that he was reasonably sure that she had not been a member of the ISL -- certainly not an active member, and that he didn't know what her address book contained or what publications were in her apartment at the present time. He stated, however, that the Communist Manifesto was his as he had purchased it in an English course he was taking at the University of _____. In answer to (f) he stated that his grandfather had raised him but that his grandfather was now dead. He stated that he doubted very much that his grandfather had attended meetings of the Communist Party inasmuch as he had escaped from Russia and was very bitter about the Communists. He denied, in answer to allegation (g), that he had ever written any articles for publication in a

newspaper published by the ISL or in any other paper.

Decision: April, 1955

Individual was notified that: "You will be retained in your present status in the Army Reserve." This is as close to a clearance as anyone gets.

Case No. 9

Inducted: October, 1952

Loyalty Certificate DD 98: Two or three days after induction.

This certificate did not contain a list of Attorney General's organizations but they were referred to in a general way. There was no officer present at the time of signing. The non-commissioned officer in charge said "are you a Communist"; individual replied "no". He was told to sign it. He asked permission to write an explanation and this was refused.

Personal History Form DD 398 submitted after 13 weeks of training. The individual was the only one in his company who was asked to prepare this form. He believes that he was asked to prepare it because he refused to volunteer for the Counter Intelligence Corps at the end of his basic training. In answer to the pertinent questions he answered "no".

Military Career

After one year of normal service, he was assigned to duty in Korea. When he was recommended for promotion he was not promoted. In May 1953 he was assigned to a classified job. In April of 1954 when his normal rotation date came up he was not rotated. When he made inquiry his Company Commander went to Division Headquarters and was told that it was none of his business. Individual filed a formal complaint stating that he would do anything he could to "speed solution to any problem which might be involved." Three days later he was re-

lieved of his duty assignment and put on a temporary assignment. On May 1st he was rotated and when he arrived at San Francisco he and one other were taken off of a ship and sent to a special Camp. He made inquiry through the Inspector General but could receive no information other than that his papers had been removed and he was under a "Congressional hold." In July, 1954 he filed a routine request for early release but this was denied.

The same day that he made this application he was served with interrogatories. In answer to the interrogatories he stated that he had applied for membership in the Young Communist League at _____ University in 1943 but that he had never received a reply to his application and had never attended any meetings. He stated further that he rapidly became aware of the fact that the Communists and the YCL were not for him and that immediately thereafter and continuing to the present time he had had only an antagonistic acquaintance with American Youth for Democracy, Labor Youth League, and the Socialist Workers Party, the organizations with which the interrogatories seemed to be concerned. He requested specifications concerning any alleged association with these organizations.

In August, 1954 his wife received a phone call from Senator _____ who asked her why her husband had not answered the questionnaire served on him. After inquiry the Senator was informed that he had in fact answered them fully and truthfully to the best of his ability. In September, 1954 the Senator informed him, through his wife, that he would be released on schedule.

Discharge: October, 1954 - Honorable Discharge.

Individual was not assigned to Reserves because he had entered the service over the age limit. He apparently is eligible to re-enlist if he so desires.

Inducted: October, 1952

Loyalty Certificate DD 98 and DD 98A: Several days after induction. Answered "none" to the pertinent questions.

Personal History Form DD 398: March, 1953

Answered "no" to item 16, concerning affiliation with Communist organizations or any organizations seeking to alter the form of government by unconstitutional means. In answer to question 17: "are there any unfavorable incidents in your life ... ?" He answered, "screened off merchant vessels by U.S. Coast Guard, June, 1951."

Separation: October, 1954 "character to be determined"

He received neither mustering out pay nor travel allowance. After several months he consulted civilian counsel who wrote the Adjutant General stating, "As almost two and a half months have elapsed since his separation, it would appear that more than reasonable time has elapsed for the Army to make a determination...." Ten days later, counsel received a reply that Private _____ case is undergoing review and "you will be further advised." Two days prior thereto, however, the letter of allegations had been received.

Letter of Allegations: January, 1955

- a. You admitted you attended the National Convention of the Socialist Workers Party held in Chicago, Illinois in 1946.

- b. You knew that the Socialist Workers Party was an organization that had been cited as subversive by the Attorney General of the United States, at the time of your attendance of the National Convention.
- c. You distributed The Militant, which is staffed and operated by the members of the Socialist Workers Party, during the National Maritime Union Convention in 1949.
- d. You were screened off the _____ (ship) on _____ as a poor security risk. Classification was upheld by the Appeal Board on _____.

Answer: January, 1955

Individual requested a hearing and notified the Board of selection of civilian counsel. He requested that his military file and other non-confidential information be made available to him. The G2 Summary of Information was made available to him and his counsel for inspection and study at the military post where the hearing was scheduled. Counsel was permitted to make rough notes of the contents of the Summary of Information.

Hearing: April, 1955

Counsel had attempted to secure, for introduction into evidence, statements from the Commanding Officers of the various posts to which the individual had been assigned. About half of these officers responded and their answers were, at best, negatively favorable. These statements insofar as available were introduced into evidence. No witnesses other than the individual concerned testified at the hearing.

Defense counsel challenged the jurisdiction of the Board to determine whether or not the individual should be separated from the Army on the basis of the allegations in view of the fact that none of the allegations concerned alleged activities while he was a member of the Armed Forces. This motion of challenge was denied on the basis that the Board was a mere fact-finding body and not a board of decision.

Counsel moved that the Board had no jurisdiction in view of the fact that the individual had completed his active service without any allegations being served against him. This motion was likewise overruled on the basis that he was still under military jurisdiction in that he was a member of the Army Reserve.

Counsel then moved that the Board adjourn the hearing "until such time as the respondent has been supplied with the full information requested by him." Counsel pointed out that the Summary of Information did not supply sufficient information to adequately answer the allegations. This motion was denied.

Counsel moved that allegation (b) be deleted from consideration in view of the fact that it was factually incorrect on its face in that it alleged that the individual had attended the National Convention of the Socialist Workers Party in 1946 knowing "that the Socialist Workers Party was an organization that had been cited as subversive by the Attorney General" when in fact the Attorney General's list was first promulgated in the late Fall of 1947. The Board ruled that it had no authority to delete any of the allegations but that it would make a note of this fact and take it into consideration.

On direct examination, the individual stated that he had

never been a member of any organization other than a recognized union in the seamen's field. He admitted that while he was a member of the Seafarers International Union - AFL that he had participated in a caucus against alleged racially discriminatory policies of the union and that this caucus had included among its leadership members of the Socialist Workers Party.

He stated that when he joined the National Maritime Union - CIO he found that the caucus that was giving leadership to the fight against the Communist domination of the union also included in its leadership members of the Socialist Workers Party. Because of the activities of this caucus and his interest in the anti-Communist fight, he attended, as a spectator, open meetings of the National Convention of the Socialist Workers Party in 1946. When Joseph Curran, the president of the National Maritime Union, broke with the Communist forces within the Union and organized a Rank and File caucus within the Union, the individual was one of the founders and active members of this caucus. Two years later when Curran, having ousted the Communists, continued to exercise what he considered to be dictatorial powers in the Union, the individual joined the Independent caucus which was fighting Curran's domination. The Independent caucus had no relationship to the Communist caucus which was also fighting Curran at the time. Among the leadership of the Independent caucus were members of the Socialist Workers Party and its organ, The Militant, carried considerable factual information concerning Curran. In connection with this fight the individual distributed copies of the Militant during the National Maritime Union Convention in 1949.

The truth of allegation (d) was admitted but the individual pointed out that this information was volunteered to his local draft board prior to induction and was again volunteered to the Army on DD form 398. Counsel contended that if this were a valid consideration for determining the character of service that the individual would have been permitted to perform in the Army, the Army should have refused to accept him for induction in view of Selective Service's prior knowledge of it. Counsel pointed out that the regulations provide that "a known Communist will not be inducted into the Armed Forces." Counsel stated that in the same manner a person who is not going to be permitted to serve or, having served, is not going to be permitted to receive a discharge based upon "the character of service he has rendered," should not be inducted in the first place.

Discharge: April, 1955 - Undesirable

Appeal to the Army Discharge Review Board: June, 1955

No Hearing has as yet been scheduled.

Inducted: Fall 1952

Loyalty Certificate DD 98 and DD 98A:

Answered "none" to the pertinent questions.

Allegations: June, 1954

- a. In _____, you claimed membership in the Oklahoma Committee to Defend Political Prisoners, an organization which is cited as Communist by the Attorney General of the United States.
- b. In _____, you worked on a Communist Collective Farm in Israel.
- c. You carried on an extensive correspondence over an extended period of time with individuals and organizations in numerous foreign countries, including the USSR and its satellites.
- d. You corresponded with the World Federation of Democratic Youth, cited as Communist dominated by the Special Committee on Un-American Activities and the Four Continent Book Corporation which was cited as a Communist publishing house by the California Committee on Un-American Activities.
- e. You visited the Soviet Embassy in Washington, D.C. on several occasions.

Answer: July, 1954

Individual requested a hearing but submitted the following answers in writing:

- a. "I have never been a member, nor have I to the best of my knowledge claimed membership in this organization, or any organization outlined as subversive by the Attorney General or the F.B.I."
- b. "I did work on said farm, but not with prior knowledge of it being Communist, and without any aid or sympathy toward their political philosophy."
- c. "I do carry on correspondence in all these and many other nations, but without intent to do harm to the United States, or to give any information injurious or detrimental to our nation."
- d. "I did write to the World Federation of Democratic Youth as to the purpose of the organization, but received no reply. From the Four Continent Book Corporation I ordered some Russian records for my foreign record collection, and a year's subscription to Soviet Union which I did not renew because it is merely a propaganda sheet."
- e. "I did visit the Soviet Embassy, as well as numerous friendly Embassies, but only out of curiosity as to what the building looked like, and to how the Russians would react toward an American."

First Hearing: August, 1954

(Assigned military defense counsel took no significant part in the proceedings and both direct and cross-examination were conducted by the president of the Field Board.)

The direct examination consisted mainly of a reiteration of the written answers already filed, however, as additional

evidence a validated Merchant Seaman card was introduced and the individual stated that, "before I received that card I talked to a F.B.I. agent, Mr. _____ and at that time he told me that he saw no reason why I should stop corresponding as he saw no harm in this corresponding over seas."

He further stated, "at the time I was working in Israel on the Communist collective farm, and I found out that it was a Communist cooperative I informed the American Consul in Haifa of my work on this farm and he then stated that I should go on working and that there was nothing wrong with my working on the farm."

On cross examination he stated that he went to Israel to visit friends after one semester at Manchester College, England; that because of financial necessity he secured a job on the collective farm and discovered after about one week that it was Communist operated. He notified the American Consul of this but continued working there for about three weeks. He stated further that the language barrier screened him from any real contact with the personnel.

He explained that he corresponded with people in many countries because of his interest in conditions and customs abroad and because of his interest in stamp collecting. He stated that he had no personal acquaintances abroad except in non-Communist countries. He explained that he had visited the Russian Embassy

twice, once to get information on decentralization of Russian industry because of a debate in which he was engaged and on another occasion for information for a term paper in political science. He stated that he had visited a number of other foreign embassies of friendly countries while he was in Washington.

He became a conscientious objector while he was at college through the influence of a Church of the Brethren minister and was a conscientious objector to combatant service when he entered the Army. He relinquished his conscientious objector's claim after the June 16, 1953 uprising in East Germany as this convinced him that resistance to tyranny even against over-whelming odds was possible.

The Field Board found that the individual "is a security risk" and recommended that he "should be separated from the service under honorable conditions."

Second Hearing: August, 1954

(The reason for the second hearing was not apparent but it is probable that it was necessary because of the failure of the first hearing Board to make a positive determination on each of the allegations.)

The assigned military defense counsel at the second hearing was competent but routine in his questioning and seemed to be inadequate for the purposes of such a hearing. Defense waived the ten days notice required by the regulations and the recorder stated that such notification "shall be waived

due to the requirement of meeting the suspense date placed on the proceedings."

The direct examination was a careful and expanded reiteration of the answers previously given with the following additional points emphasized: that all of the alleged activities had been non-political insofar as the individual was concerned, that he had corresponded with approximately 168 persons in non-Communist countries, that he wrote to the World Federation of Democratic Youth during a course in political Science "only out of interest as to exactly what this organization itself represented itself as" and that he never received an answer to his letter.

The Board recommended that he "be discharged from the service in the interest of national security and that he be provided with DD form 257A (general discharge) as a security risk."

Discharge: November, 1954 (Two weeks prior to the time that he would have been scheduled for a normal discharge.)

General Discharge Under Honorable Conditions

Note on Questions Asked at Hearings

After he had explained his extensive correspondence abroad as growing out of an interest in foreign people, foreign travel and foreign stamps, he was asked if he collected American stamps and how much travel he had done in America.

After stating that certain friends he had had in the Soviet zone in Germany were listed by the Soviet occupation author-

ities at Leipzig as having volunteered to work in either Poland or the Ukraine, which actually meant that they were sent into slave labor, he was asked "how did you acquire the knowledge that these people were so listed by the Soviet authorities? I must remind you that you are still under oath."

He was asked, "Did you believe at one time that the government of the United States and the Communist government of Russia could co-exist in a peaceful manner?" He answered, "Yes." He was then asked, "Do you entertain that thought at the present time?" He answered, "No, sir, my attitude is realistic about the matter."

Case No. 12

The file was not available for inspection inasmuch as it had been forwarded to counsel in Washington, D.C. pending an appeal before the Army Discharge Review Board. Local counsel, however, well remembered the details and gave the following report.

Inducted: Late 1952

Loyalty Certificate DD 98: Claimed Federal Constitutional
Privilege

Personal History Form DD 398: Claimed Federal Constitutional
Privilege

Later Loyalty Certificate DD 98: Claimed Federal Constitution-
al Privilege

Despite these repeated refusals to execute the pertinent loyalty forms, he was shipped to Korea where he was permitted to serve normally.

Letter of Allegations: Received while he was in Korea.

The allegations primarily involved claims that he knew and associated with Communists.

Answer: He had no effective counsel and did not have access to the pertinent regulations. He requested further information and because he did not specifically state that he wanted a hearing the Judge Advocate General regarded this request as a waiver of a hearing.

Discharge: Undesirable

Received about 3 months prior to the end of his term of service.

Subsequent Action:

Civilian counsel made a motion to set aside the discharge in default of a hearing and this was denied. There is now pending an application for review before the Army Discharge Review Board.

Inducted: October, 1952

Loyalty Certificate DD 98: Several days after induction.

Answered "none" to the pertinent questions.

Letter of Allegations: February, 1954

(In accordance with the regulations at that time, he answered within thirty days. No hearing was accorded him.)

- a. In ____ and ____, you were employed at Camp ____, which was reported to be a Communist operated camp.
- b. In ____, you were employed by the ____ Urban League, which was reported to be a subversive organization.
- c. In ____, you registered to vote in New York City with the American Labor Party. The American Labor Party is cited by the House Committee on Un-American Activities as being under Communist control in New York City.
- d. You solicited contributions of money for the defense of persons under indictment for violation of the Smith Act.
- e. You have a father, ____, who:
 1. was reported to be a member of the Communist Party
 2. was a member of the Negro Labor Victory Committee, which has been cited as subversive and Communist by the Attorney General of the United States
 3. was an officer for the International Workers Order, which has been cited as subversive and Communist by the Attorney General of the United States
 4. In ____, was a delegate to the 10th National Negro Congress, which has been cited as subversive and Communist by the

Attorney General of the United States

5. In _____, was an instructor at _____ School, which has been cited as an adjunct of the Communist Party by the Attorney General of the United States
6. In _____, _____, _____, _____, and _____, you were registered in New York City with the American Labor Party.
- f. You have a step-mother, _____, who, from _____ to _____, was registered with the American Labor Party.
- g. You have associated with persons who were Communists or Communist sympathizers.

Answer: March, 1954

In answer to the specific allegations, he stated, in substance:

- a. Camp _____ caters to lower income people. It has actively encouraged all working class people, Negroes included, to come. Persons who are hostile to inter-group relations would attempt to detract from it by labeling it as Communist dominated. I was employed in this camp for two years, one as a kitchen helper and the other as assistant breakfast cook.
- b. I was employed by the _____ branch of the Urban League. I deny that it is in any way subversive.
- c. I was registered to vote with the American Labor Party, which is a legally recognized political party in the state of New York.
- d. I did solicit funds for this purpose because I believe that people are innocent until proved guilty. It should be

noted that many prominent legal authorities including members of the Supreme Court of the United States questioned the constitutionality of the Smith Act.

- e. and f. It is with the deepest moral indignity coupled with filial piety that I refuse to answer these questions concerning my father and my step-mother.
- g. I am not now and never have been a member of the Communist Party. I have done a considerable amount of public speaking and in the course of this have met many people; therefore, it is possible that I have met and associated with persons who were Communist or Communist sympathizers. I do not hold with the "guilt by association" gimmick, however, and deny that any such association has any bearing upon my own beliefs.

Decision: April, 1954

"You will be retained in the service at your present grade, not promoted, and upon the end of your term of service you will be discharged with the type of discharge appropriate to the character of the service you have rendered at that time."

Letter from Adjutant General: May, 1954

"Letter of ____ April will no longer apply. ____ will be discharged under AR 615-370. ____ will be given an Undesirable discharge.

Discharge: June, 1954 - Undesirable

Discharge Review Board: Application filed June, 1954

Hearing: October, 1954

Appeal denied November, 1954

Board for the Correction of Military Records: December, 1954 .

Appeal denied January, 1955

Appeal to the Secretary of the Army, February, 1955

The United States District Court: May, 1955

Individual instituted suit. In his complaint he outlined all of the facts and actions herein stated and further set forth his excellent record of service in the Army. He alleged that he was "entitled to a discharge based upon the character of service he had rendered" and not upon alleged pre-induction activities or associations that were in no wise illegal. He contended that on such a basis he could only receive an "Honorable" discharge. He asked the court to declare the "Undesirable" discharge to be "null, void, illegal, and in violation of the First, Fifth and sixth Amendments of the Constitution; in violation of Articles 1 and 3 of the Constitution, in violation of the following statutes: 41 Stat. 809, 61 Stat. 501, 64 Stat. 145; and of Army regulation 615-375. He further asked that his discharge "be ordered changed from 'Undesirable' to 'Honorable' as of the date of his original discharge." The government had 60 days in which to file an answer but secured an extension of that time to July 30, 1955 with the consent of counsel.

Letter from Assistant Secretary of the Army: July, 1955

".... based on our information now available in the case of Mr. _____ it would appear that his removal from

service with an Undesirable discharge and that the subsequent action of the Army Discharge Review Board was consistent with the criteria established by the Department of Defense. This information may not, however, include all of the facts.

"Accordingly to insure that the ends of justice are served, I have instructed the Army Board for the Correction of Military Records to undertake a fresh evaluation of the entire case. You will be informed in advance of the scheduled date for hearing. At the hearing Mr. _____ will have the opportunity to present in his own behalf any evidence he may wish to have considered."

Answer to Assistant Secretary's Letter: July, 1955

Counsel replied that the individual had presented all of the pertinent evidence he had to present and that he was entitled to an Honorable discharge based upon the character of service he had rendered. He stated that if the Assistant Secretary was ready to accept this concept that a discharge should be based solely upon the character of service rendered, he, the counsel, would be glad to participate in the Board's "fresh evaluation." Otherwise, he felt that such a hearing would be pointless. There has been insufficient time for the Secretary to answer.

Case No. 14

Inducted: November, 1952

Loyalty Certificate DD 98: Several days after induction.

Claimed Federal Constitutional privilege.

Letter of Allegations: December, 1953

- a. You were a member of the Labor Youth League, an organization cited as subversive by the Attorney General of the United States.
- b. In _____, you attended a meeting of the Communist Party.
- c. In _____, you attended a rally and in _____*, _____, and _____ you participated in picket lines sponsored by the Civil Rights Congress, an organization cited as subversive and Communist by the Attorney General of the United States.
- d. In _____, you participated in picket lines sponsored by the Civil Rights Congress and endorsed by the Independent Progressive Party.
- e. In _____, you participated in the parade sponsored by the American Peace Crusade which has been cited by the House Committee on Un-American Activities as an organization which the Communists established.
- f. You have a mother, _____, who:
 1. in _____ and _____**, was a member of the Communist Party
 2. in _____***, registered as a Communist
 3. from _____ to _____*, was registered with the Amer-

ican Labor Party in New York City. The American Labor Party has been cited as Communist controlled in New York City by the Special Committee on Un-American Activities

4. in _____, registered and circulated petitions for the Independent Progressive Party.

5. _____*, _____, and _____, subscribed to the Daily Peoples World.

g. You have a father, _____, who, in _____***, was registered as a Communist and in _____***, was registered with the American Labor Party in New York City.

(* indicates over five years prior to induction.

** indicate over ten years prior to induction.

*** indicate over 15 years prior to induction.)

Answer:

The individual was given 30 days in which to file written answer. No hearings were available at this time. His answer was not available for inspection but it is understood that he claimed his federal constitutional privilege.

Discharge: March, 1954 - General Discharge Under Honorable Conditions.

Inducted: December, 1952

Loyalty Certificate DD 98: After induction.

Executed in its entirety denying all membership and association.

Letter of Allegations: September, 1954

- a. You listed as character references three individuals who were associated with or in sympathy with Communist or Communist front organizations.
- b. You maintained an address book in which are listed the names of ten individuals associated with Communist or Communist front organizations, or who were subscribers to Communist publications.

Demand for Particulars: October 1954

Defense counsel asked in two motions for the following particulars:

- a. In what documents were the character references given and the names of the character references; the organizations and the nature of the associations; when, where, and in what manner had the individuals expressed sympathy for the organizations.
- b. The names of the organizations and the publications, the dates, and the names of the persons listed in the address book.

Defense counsel received a reply which informed him that the individual was not appearing before a court of law but

at an administrative hearing to give him an opportunity "to show cause why he should be retained in the service because of the nature of the allegations against him." The requested particulars were denied.

Hearing: October, 1954

Defense counsel objected to continuing the proceedings on the basis that the admission of the confidential information into evidence without making the contents available to the individual and not giving him an opportunity to confront and cross-examine the witnesses against him was a violation of the Fifth and Sixth Amendments; that the proceedings were an attempt to deprive him of a discharge based upon the character of the service he had rendered; that the regulations under which the proceedings were being conducted were published after the alleged incidents and after the individual had been inducted; that the alleged acts were not prohibited at the time that they were alleged to have happened and that, therefore, the proceedings were an attempt to inflict punishment without judicial trial and constituted a bill of attainder.

After these motions were denied, the defense introduced officers from the unit, the service record, and DD 98. The individual took the stand in his own defense. Defense counsel then moved that the Field Board request G2 to supply additional information concerning the charges. This request was granted and the hearing was continued until a report could be received from G2.

In late October the individual was asked to extend his term of service beyond mid-December, 1954 so that the information that the Board had requested could be obtained. He asked the advantages or disadvantages to him of this and what would happen if he refused. He received no answer and therefore he refused.

Discharge: December, 1954 - Honorable Discharge.

He is barred however, from re-enlistment without permission of the Adjutant General.

Inducted: 1953

Loyalty Certificate DD 98: Information unavailable.

Letter of Allegations: November, 1953

- a. From ____ to ____, you were a member of the International Workers Order.
- b. In ____, you attended the national convention of the Jewish Young Fraternalists, which is reported to be a youth section of the International Workers Order.
- c. In ____, you were employed at Camp ____, which is reported to be a Communist Party Camp.
- d. You have a father, ____, who:
 1. from ____ to ____, was an officer of the International Workers Order
 2. in ____, was an officer of the Jewish Peoples Fraternal Order and in ____ was still active as an official of the Jewish Peoples Fraternal Order, which has been cited by the Attorney General of the United States as Communist
 3. in ____ and ____, was a member of the Communist Party
 4. in ____ and ____, sponsored a fund drive for the Daily Peoples World
 5. in ____ was a member of the Jewish Blackbook Committee, which has been cited as a Communist front by the California Committee on Un-American Activities

6. in _____, was an instructor at the Jewish Peoples Fraternal Order's school.

e. You have a mother, who:

1. from _____ to _____, was a member of the Communist Party
2. from _____ to _____, contributed to American Youth for Democracy, an organization cited as subversive and Communist by the Attorney General of the United States
3. in _____, sponsored a party for the benefit of the Daily Peoples World.

The individual was given 30 days in which to reply in writing. The contents of his reply is not available.

Discharge: Spring, 1954 - Undesirable

Inducted: 1953

Loyalty Certificate DD 98:

Letter of Allegations: May, 1954

- a. In _____ and _____, you were a member of the Labor Youth League.
- b. In _____, you were registered at the California Labor School which has been cited by the Attorney General of the United States as subversive and Communist
- c. In _____, you were listed among the organizing committee of the Labor Youth League who were supporting a demonstration against the North Atlantic Pact.
- d. In _____, you associated with known Communist Party members.
- e. In _____, you subscribed to the Daily Peoples World
- f. You have a father-in-law, who:
 1. from _____ to _____, was a member of the Communist Party
 2. from _____ to _____, was a member of the International Workers Order which has been cited by the Attorney General as subversive and Communist.
- g. You have a mother-in-law, who:
 1. in _____, was a local official of the Communist Party
 2. from _____ to _____, was a member of the International Workers Order

3. in _____, was a member of the Civil Rights Congress.

h. You have a step-mother, who:

1. was a member of the Communist Party from _____ to _____.

i. You have a wife, who:

1. in _____, was a member of the International Workers Order

2. in _____, was reported to be an official of the Labor Youth League at the University of _____.

j. You have a brother, _____, who:

1. in _____, was a member of American Youth for Democracy.

Answer:

He was given 7 days in which to answer in writing and no hearing was accorded him.

Discharge: Summer, 1954 - General Discharge Under Honorable Conditions.

Inducted: Fall 1954

Loyalty Certificate DD 98:

Answered "none" to the pertinent questions.

Letter of Allegations: March, 1955

(Because of the extensive and specific nature of the allegations, they are only being summarized to reduce the possibility of identification.)

a. You have a father, _____, who:

(was reported as being pro-Communist almost 20 years prior to induction and with having been a subscriber to or a member of various allegedly Communist front organizations.)

b. You have a mother, _____, who:

1. In _____, (over 15 years prior to induction) was reported as being pro-Communist, and a member of the Friends of the Soviet Union.

2. Was reported to have solicited her sister to join the Communist Party.

3. (Here was a long list of petitions and sponsorship for Communist causes.)

4. Was reported to have tried to persuade others to adopt Communist ideology.

5. Is reported to be a dominating influence over other members of the family.

c. You have a sister, _____, and a brother-in-law, _____, who were reported as being affiliated with Communist organizations.

Hearing: May, 1955

Prior to the hearing counsel and the individual were shown the G2 Summary of Information which contained additional details concerning the activities of the parents, the sister, and the brother-in-law. There was no information whatsoever relating the individual to any of the alleged activities of the relatives.

The parents submitted affidavits and the individual testified in his own behalf.

Separation about four days after the Field Board hearing, which was the normal time for separation.

Honorable Separation but with the notation that he could not re-enlist without permission from the Adjutant General. .

Discharge: July, 1955 - General Discharge under honorable conditions, with the notation "SR 600-220-1 applies."

Inducted: January, 1953

Loyalty Certificate DD 98 and DD 98A:

Claimed Federal Constitutional Privilege.

Separation: February, 1955

"Character to be determined"

The date of separation indicates that he continued in active service for 6 days beyond the statutory period of two years.

There is no explanation of this extended period.

Letter of Allegations: February, 1955 (approximately two weeks after separation.)

- a. In 1953 you signed Loyalty Certificates DD 98 and DD 98A inserting the words "Federal Constitutional Privilege claimed."
- b. In _____, you were one of the sponsors of an advertisement in the _____ issue of the _____ paper of the _____ Civil Rights Congress demanding repeal of the Smith Act. The Civil Rights Congress has been cited as subversive and Communist by the Attorney General of the United States.
- c. In _____ (during period of military service) on at least three different occasions you attended functions held under the auspices of the Labor Youth League, an organization cited as a Communist front by the Attorney General of the United States.
- d. You had listed in your notebook the names of eight individuals, all of whom have subversive backgrounds.

Request for Hearing: March, 1955

Demand for Bill of Particulars: March, 1955

Counsel requested amplification of the charges in order to enable him to prepare the defense as follows:

1. A copy of the advertisement alleged in (b) and information indicating that the individual concerned authorized the use of his name if it in fact appears.
2. The nature of the Labor Youth League functions alleged in (c) and when and where they occurred.
3. The names of the eight individuals referred to in allegation (d) and the nature of their subversive backgrounds, and the extent to which the individual is alleged to have close and sympathetic association with them.

Counsel further stated that "in connection with the last allegation, it should be remembered that the notebook was stolen from the individual's locker," that it was presumably in the possession of the Army, and he demanded its return. Counsel further alleged that the Army had no right to withhold a formal separation or discharge from the individual and made a motion to dismiss the proceedings for lack of jurisdiction and to issue an honorable discharge to the individual.

No reply to this demand and motion had been received by early May, 1955.

Inducted: March, 1953

Loyalty Certificate DD 98:

Claimed Federal Constitutional Privilege.

Personal History Form DD 398:

Claimed Federal Constitutional Privilege.

Letter of Allegations: August, 1954

- a. You claimed the Federal Constitution Privilege in refusing to answer Loyalty Certificate DD 98 and Item 16 of Personal History Form DD 398.
- b. In _____, you were a member of the Socialist Workers Party, an organization which has been cited by the Attorney General of the United States to be subversive and Communist.
- c. You are reported to have Communistic tendencies.
- d. You have a wife who in _____, _____, and _____, was a member of the Socialist Workers Party.

(All dates referred to were three or more years prior to induction.)

Hearing: November, 1954

No Summary of Information was supplied the individual either at the time of, or advance of, the hearing. The government introduced no evidence whatsoever in support of its allegations other than that contained in Government Exhibit #3 which included the Confidential File which was unavailable to the individual for inspection. In con-

nection with this exhibit the record states:

"Inclosure number 3 will be made available only to board members and appropriate intelligence personnel. NO copies, extracts or memoranda will be made of the information contained in this inclosure without prior approval of the Assistant Chief of Staff, G-2, Department of the Army. Under no circumstances will Private _____, nor anyone representing him be allowed access to inclosure 3, and personnel handling this case are to be cautioned not to disclose the source of any of this material to anyone connected with the enlisted man concerned."

The defense relied primarily upon the legal issues and constitutional issues raised in many other cases concerning the propriety of the hearing and the inability of the individual to answer undisclosed accusations.

Discharge - Undesirable

Appeal to Army Discharge Review Board

Hearing: June, 1955 - No decision.

Case No. 21

Inducted: March, 1953

Loyalty Certificate DD 98: Several days after induction.

Answered "none" to the pertinent questions.

Letter of Allegations: January, 1954

- a. In _____, _____, and _____, you were a member of the _____ Chinese American Youth League, which reportedly promotes activities and policies indicating sympathy with the Chinese Communist government and the Soviet Union.
- b. You have made statements which indicate that you are sympathetic with communism.
- c. You have a wife, _____, who has indicated that she is sympathetic with communism.
- d. You have a sister-in-law, _____, who is a self-admitted Communist.

Answer: February, 1954

(In accordance with the regulations at that time he had thirty days in which to submit an answer and no hearing was accorded him.)

- a. I joined this organization in _____ for the social life and gave it up when I was drafted.
- b. I lived in China for 10 years. The government is lifting the present standard of living and I am therefore for communism in China now. I am against Communism

in the Western world because the Western world has surpassed that stage of social and economic development where such a type of government can exist. Communism is a primitive type of government for primitive and backward societies. I am ignorant of communism in Russia but find its propaganda hard to believe.

- c. My wife is "in the middle of the road" on world affairs and is generally on the indifferent side regarding political matters.
- d. I do not know whether this is true or not and my wife does not know. We have had little contact with her as she lives in another city and has never discussed communism with us.

Discharge: March, 1954 - Undesirable

Subsequently he was denied GI educational benefits and was denied eligibility for veterans preference by the state of _____.

Inducted: March, 1953

Loyalty Certificate: Information unavailable

Letter of Allegations: January, 1954

- a. In _____, you were a member of the Socialist Workers Party, an organization cited as subversive and Communist by the Attorney General of the United States.
- b. You reportedly admitted that you were a Communist Party member.
- c. You associated with and were sympathetic to known Communists and Communist sympathizers.
- d. You reportedly were sympathetic with Russian and Communist points of view.

Answer: January, 1954 (At that time no hearing was permitted)

- a. Never a member or in sympathetic association with the Socialist Workers Party but inadvertently attended a Kutcher meeting _____ near _____ and made a small contribution to his case.
- b. Never admitted and never was a Communist Party member and asked the circumstances and the name of the person to whom he allegedly admitted such membership.
- c. Allegation is too vague and indefinite to answer and asked for particulars and the basis for alleging that he was sympathetic to these people.
- d. The allegation is too vague and indefinite to answer; requested the Russian and Communist points of view to which

he has shown sympathy and in what way he has shown such sympathy.

Discharge: March, 1954 - Undesirable

Inducted: March, 1953

Loyalty Certificate DD 98: Several days after induction.

Answered "none" to questions concerning membership or association with listed and other subversive organizations.

Separation: March, 1955 - "Character to be determined"

Letter of Allegations: March, 1955 (2 weeks after separation)

- a. You were associated with the American Youth for Democracy, an organization cited as subversive and Communist by the Attorney General of the United States.
- b. In _____, you signed a Communist Party nominating petition.
- c. From _____ through _____ you received the Worker, the Sunday edition of the Daily Worker, an East Coast Communist daily newspaper.
- d. In _____, you were associated with the Nature Friends of America, an organization cited as subversive and Communist by the Attorney General of the United States.
- e. You have parents, _____ and _____, who in _____, were members of the Communist Party.

G2 Summary of Information

This summary was supplied the individual on request by his counsel in advance of the hearing and he was permitted to retain it throughout the hearing.

This summary included the following alleged information:

- a. that he had been a member of American Youth for Democracy and/or participated in the activities of

the Club _____ of the AYD, and that he attended the Jefferson School of Social Science,

- b. that he had signed a _____ nominating petition for _____ who was reported to have been the legislative director of the _____ State Communist Party,
- c. that he received the Worker (Sunday edition of the Daily Worker, East Coast Communist paper) from _____ through _____
- d. that his father and mother were reported to be Communist Party members in _____ (this year is the year preceding the year alleged in the letter of allegations). His mother was also reported to be a member of the National Council of American-Soviet Friendship.

Hearing: Originally scheduled for late April, 1955, it was

postponed until June, 1955 at the request of defense counsel.

At the hearing, defense counsel made numerous motions objecting to the validity of the proceedings on the following basis;

1. the allegations were not filed against the individual during the period of active service and therefore it was improper after the period of active service to conduct a hearing to determine the character of separation from active service that he should receive. This was particularly true in view of the fact that all of the allegations concerned pre-induction activities.
2. that the Hearing Board (Field Board of Inquiry) was improperly constituted in that some of the members of the

Board had examined the Confidential file prior to the opening of the hearing.

3. that the Government introduced no evidence in support of the allegations during the open sessions of the hearing.
4. that the Board admitted that they would consider confidential information not available to the individual for challenge or cross-examination.
5. that allegations a, b, c, and d should be deleted from consideration as they allegedly occurred prior to induction and that the alleged acts and associations were not prohibited by law at the time they allegedly occurred, or now.
6. that allegation e was not substantiated by the G2 summary of information supplied to the defense and further that it was not brought within the criteria of 11 (d) of SR 600-220-1 in that there was no allegation that the individual had been in sympathetic association or is currently maintaining a close continuing association with his parents.

All of these objections were overruled and the defense proceeded to present its case by having as a witness the father of the individual, who testified to his long years of capitalist endeavor and his strong opposition to communism. He further testified in his own defense that he had had almost 30 years of very active participation in the Workmen's Circle as an officer of his local and a chairman of its Sick Committee and that the Workmen's Circle had 50 years of opposition to communism.

The father and the individual testified that the mother had never been a member of the Communist Party, that she was essentially a non-political person, and that her only association with the National Council of American Soviet Friendship had been in connection with employment as a piano accompanist at various concerts which had started during the war years. They further testified that she had been an accompanist for many other organizations including the Liberal Party and the Democratic Party.

The individual, testifying in his own behalf, stated that his association with American Youth for Democracy had been participation in social activities, particularly dances, during his high school years. He stated that he may have signed a nominating petition for the person named in the G2 Summary but that, if he did this, he had done it in accordance with his belief that any legal party was entitled to be represented on the ballot. He stated that he had not voted for this particular individual and had never voted for a Communist Party candidate. He stated that he had subscribed to the Worker through importunities of a friend and had only read it casually over a period of several years.

He stated that he had been employed as a kitchen worker in an adult camp operated by Nature Friends of America for one summer season. For five or six previous summers he had been employed at other summer adult camps. He stated that such employment was a financial necessity for him and that he participated in no political activities during the course of this employment and had no other contact with the organization.

He stated positively that he was not in sympathetic association

with the Communist Party or with any other Communist organization. He further stated that he considered the Soviet Union a totalitarian regime and an enemy of the United States; he stated that he would defend the United States against all enemies, including the Soviet Union and any other communist country.

Army Review Board: June 1955

After receipt of the transcript of the hearing and in accordance with the regulations, the individual's counsel submitted a brief or memorandum to the Army Review Board, even though he had no knowledge of the findings and recommendations of the Field Board.

This memorandum emphasized all the objections made at the hearing and, in addition, pointed out that the President of the board had stated that the purpose of the hearing was to give the respondent "an opportunity to reply to the allegations and also to prove his case that he is not a Communist" Counsel pointed out that this was prejudicial error in that there was no allegation that he had ever been a Communist. Counsel further contended that the G2 Summary of Information had indicated that the individual had been under investigation from varying periods since April, 1950. In view of this, the Army knew or should have known that "certain non-Army-acceptable associations and activities" had been alleged and should have made a determination prior to induction whether or not it was going to permit the individual to serve normally.

No decision had been rendered by the Army Review Board by late July, 1955.

Inducted: May, 1953

Loyalty Certificates DD 98 and DD 98A: After induction.

Accomplished DD 98 in its entirety denying that he had ever been a member of or sympathetic to, or in association with Communist organizations. He refused to accomplish DD 98A (the Attorney General's list), claiming the federal constitutional privilege.

Interview: October, 1954

He was told that the purpose of the interview was to determine whether or not he was a member of a subversive organization and to determine whether or not he had lied in denying that he had never been a member of a Communist organization. He volunteered the information that he had been a member of Students for Wallace, the Socialist Club of _____ University, and the Libertarian Socialist League; none of these organizations has been listed by the Attorney General as subversive or Communist. He refused to give the names of anyone who had been associated with him in any of these clubs.

2nd Interview: November, 1954

The primary purpose of this interview seemed to be to secure names of people who had been associated with him in the named organizations. He continued to refuse to supply any names.

Because he was stationed abroad and because he was not being given any specific assignments which made it obvious to him that he was being flagged (held under an administrative hold) he wrote

to the Inspector General asking what action could be taken to clear up his case. Three months later he received an answer from the Inspector General's office which stated that "Investigation of your complaint reveals that the entire matter is being handled in accordance with all pertinent regulations."

Separation: May, 1955. "Character of Separation to be determined."

He was returned to his point of induction from abroad.

Hearing: None scheduled as of June, 1955.

Case No. 25

Inducted: June, 1953

Loyalty Certificate DD 98:

Individual originally answered "none" in reply to the pertinent questions. He later volunteered association with the organizations contained in the allegations when he prepared a new DD 98 and personal history form DD 398.

Military Career:

Individual performed normal duties during his full two years of required active duty but he was aware that he was under special investigation and administrative hold during most of the time.

Letter of Allegations: July, 1955

- a. From about ____ to ____, you were a member of the American Youth for Democracy, an organization cited by the Attorney General of the United States as subversive.
- b. About ____, you were a member of the Labor Youth League, an organization cited as subversive by the Attorney General of the United States.
- c. From ____ to ____, you were employed by the Civil Rights Congress, an organization cited by the Attorney General of the United States as subversive.
- d. You possess a personality trait (Passive dependency reaction, chronic, severe).

e. In _____, you listed as a character reference, _____, a person who registered his political affiliation with the American Labor Party from _____ to _____, an organization cited in 1944 by the House of Representatives Special Committee on Un-American Activities as subversive. At the same time you also listed as a character reference, _____, who registered her political affiliation with the American Labor Party for the following years: _____, _____, _____, _____, _____.

Hearing: Not scheduled by late July, 1955.

(These allegations were received too late to be included in the classification of allegations in the body of this report.)

Inducted: July 1953

Loyalty Certificate DD 98: First week after induction.

Claimed Federal Constitutional privilege.

Interview:

Company Commander called him in for an interview and tried to persuade him to execute DD 98. He refused and was finger printed by C.I.D.

Personal History Form DD 398: Claimed Federal Constitutional privilege.

Letter of Allegations: July, 1954

- a. In ____, you were an active member of the ____
Section of the Communist Party in ____.
- b. In ____, you were president of the Communist Party club
on the University of ____ campus.
- c. In ____, you attended a meeting of Communist Party club
presidents at the home of ____, a Communist Party
organizer at ____.
- d. In ____, you were an active member of the ____
Club of the Communist Party.
- e. In ____, ____, and ____, you attended numerous meetings
of the Communist Party.
- f. In ____ and ____, you paid dues to the Communist Party.
- g. In ____, ____, and ____, in ____, you sold the
"Daily Worker", an East Coast Communist newspaper.
- h. In ____, you distributed Communist Party literature.
- i. In ____, and ____, you attended several Communist Party

Section Organizers' meetings.

j. In _____, you were reliably reported to have solicited funds for the Communist Party.

k. In _____, you attended several Communist Party staff meetings.

Hearing: August, 1954

As the same procedure and testimony was approximately reproduced in the second hearing, it will not be discussed at this point. The Board found that all of the allegations had been substantiated and recommended an Undesirable Discharge.

This hearing was invalidated on the Army's own motion because the recorder had sat in upon the Board deliberations and an unauthorized person, the Post legal officer, had been present at the final session for the presentation of findings and recommendations.

Reconvened Hearing: October, 1954

The individual was never supplied with a G2 Summary of Information or any other information concerning the investigative file. The Government presented no evidence. The defense presented a number of military personnel witnesses including a Major and a Master Sergeant. All of these witnesses testified to the conscientious and extremely capable manner in which the individual had performed his duties as a soldier. These duties had included being a cadre man in the basic training and an instructor in the _____ School. Various

efficiency job records were introduced all of which substantiated the record of his conscientious performance of responsible jobs of a non-sensitive nature. The individual testified for the purpose of amplifying his military service record and to discuss a statement which he had submitted at the previous hearing in answer to the allegations. He specifically refused to answer any questions concerning his pre-induction associations or political activities but stated categorically that he had severed all such associations prior to his induction into the Armed Forces.

This sworn statement set forth:

1. a refusal to rebut the letter of allegations because none of the allegations alleged any activity during the period of military service, any violation of law or disloyalty, or of any other misdeed constituting a crime or wrong-doing, and
2. his military history which had been quite outstanding within the limits of his obviously restricted duties.

The Board found that all of the allegations had been substantiated and recommended an Undesirable Discharge.

Discharge: December, 1954 - Undesirable

Inducted: July, 1953

Loyalty Certificate DD 98: Four or five days after induction,

On this certificate and on 2 subsequent DD 98's that the individual prepared, he indicated that for a brief period in 1945 or 1946 he had attended some social gatherings of American Youth for Democracy and the Jewish Young Fraternalists. He also indicated in the appropriate place that he had been a member of these organizations. (It should be noted that the Jewish Young Fraternalists does not appear on DD 98A as an organization listed by the Attorney General of the United States as subversive.)

He was immediately finger-printed and presumably placed under investigation.

Military Career:

From the very beginning of his service he had an outstanding record displaying energy and enthusiasm beyond the requirements of his duty. His Unit Commander in basic training later stated:

"During this period he performed his duties in an exemplary manner, always doing his best. I observed him on different occasions performing his duties. He is sincere, honest, trustworthy, and level headed. I would be more than glad to have Private _____ serve under me in any Unit I am assigned to."

In October, 1953, General _____, Commander of Fort _____, in a routine inspection of the Supply Warehouse to which Private _____ was assigned, singled him

out for a personal commendation for his soldierly bearing, efficiency, and obvious enthusiasm. (We have been unable to secure written confirmation of this.)

His record at Camp _____ where he was assigned to Supply was so outstanding that he performed the functions of a Sergeant 1st Class even though he was frozen in the rating of Private 2. At the hearing which took place later, his Company Commander, 1st Sergeant, and Company Clerk testified strongly in his behalf. Even after the decision of the Board that he should be retained "in specially controlled duties without change of station," he was highly commended and recommended for promotion.

In November, 1954, his Company Commander wrote:

"This is to recommend Private _____, who has been a member of this Unit under my command from May 1954 to November 1954.

"During that period, Private _____ was assigned as Supply Clerk, and in the absence of a supply sergeant he acted in the capacity of the Supply Sergeant, a position that calls for a grade four (4) ranks higher than the grade he held.

"While acting as Supply Sergeant, Private _____ demonstrated a high degree of initiative, loyalty, integrity and intelligence. He is held in high regard by his superiors and contemporaries. His work in the supply room raised the operation of that section from a point of mediocrity to a high degree of efficiency so that on the last inspection from a higher headquarters the supply section received a rating of superior, the highest rating available.

"I would be more than pleased to have Private _____ in my organization at any time and recommend him highly for any type of work that he sees fit to apply himself to."

In December, 1954, another of his Company Commanders stated:

"Private _____, supply sergeant, Instructor Company. The _____ School, Camp _____, _____ is highly recommended for promotion to Private First Class. He is thirteen (13) months in grade and has acted as supply sergeant of this organization for nine (9) months. It was through his efforts that Company was awarded a superior rating in supply in the recent OCAFF inspection. He is hardworking, loyal, and devoted to his job.

"Private _____ has not been previously promoted because of an S-2 hold. He appeared before a board of officers in August 1954 and received a letter from Headquarters, _____ Army, dated October 1954, stating that as a result of the board decision, he would be retained in service.

"Private _____ is not working in a sensitive position. Under normal circumstances because of his industry and ability, he would be a corporal by this time. Immediate promotion is strongly recommended."

He never received a character or efficiency rating less than "excellent".

Letter of Allegations: June, 1954

a. In _____, _____, _____, _____ and _____, you were a member of the following Communist front organizations which are cited as subversive and Communist by the Attorney General of the United States:

- (1) Jewish Peoples Fraternal Order
- (2) American Youth for Democracy

b. You indicated on DD Form 98 that for about 3 or 4 months in _____* or _____*, you had attended social meetings sponsored by the American Youth for Democracy and Jewish Youth Fraternalists.

(* Over five years prior to induction.)

Answer: June, 1954

He requested a personal appearance hearing but, in addition, submitted a written rebuttal. He stated specifically that he had never been a member of either of the organizations named in the allegations. He reaffirmed his statements on DD 98 in reference to attendance at social meetings sponsored by the AYD and the Jewish Young Fraternalists but stated that he had indicated on DD 98 that he had been a member of these organizations through either mis-information or wrong instructions given him by the sergeant who was in charge when he executed the form.

Hearing: August, 1954

(The hearing was conducted on very short notice - approximately three days - contrary to regulations. In view of the fact that defense counsel waived the short notice, however, this is not an important consideration at this time.)

The government introduced no evidence whatsoever at the hearing; not even in the form of a confidential file unavailable to the individual for examination. It was evident, however, from the statements made by the president of the board that the confidential file had been examined by the Board members prior to the opening of the hearing.

Defense specifically waived the rights of the individual under the Fifth Amendment and the 31st Article of the Uniform Code of Military Justice. Defense undertook to lay bare the individual's entire life and beliefs both by his own testimony, by the testimony of the military personnel previously

referred to and by a number of affidavits or letters from military personnel with whom the individual has been associated, his employers in civilian life, his Rabbi in civilian life, the Director of the youth division of his local synagogue in civilian life, and other people who knew him well while he was a civilian. One unusual aspect of this case was that the individual had, at his own request, voluntarily submitted to a lie detector test in advance of the hearing and expert testimony concerning the results of this test was introduced at the hearing. (See below.)

Findings of Field Board: (The regulations in existence at that time authorized the Field Board to publicly announce its findings and recommendations.) The Board found that he had been a member of the Jewish Peoples Fraternal Order during the years 1949 and 1950 in that he had admitted that he "attended gatherings of the Jewish Young Fraternalists and that you contributed money (25¢) which may have been considered as dues and further that you received correspondence from this organization."

The Board found that he was not a member of American Youth for Democracy, "it appearing compatible to the Board that at your age (15) during the period of alleged membership you could have attended the meetings of this organization and not been a member, sympathizer or affiliated." The Board recommended: "retention in the military service in specially controlled duties without change of station."

Review of Army Review Board:

In accordance with the regulations, the individual submitted a letter to the Adjutant General in connection with the "Review of Findings of the Field Board." In this letter he stated that the finding that he had been a member of the Jewish Peoples Fraternal Order was not supported by any evidence contained in the transcript of the Field Board Hearing. He pointed out that, "I stated under oath that I had some slight contact with an organization known as the Jewish Young Fraternalists. At the time I had this connection with the Jewish Young Fraternalists, I was not even aware of the existence of the Jewish People's Fraternal Order, nor did I know that the Jewish Young Fraternalists had any connection with any other organization."

Concerning the recommendation that he be retained in specially controlled duties, he stated: "It is not my desire to gain access to any sensitive position while in the Army, but rather that all doubt concerning my loyalty be removed. I re-assert that all my contacts with the aforementioned organizations have been innocent and without any knowledge of their subversive, ulterior motives. On the basis of the record of the board proceedings, I ask complete exoneration from the derogatory information alleged against me."

Pre-Discharge Action:

The individual was not offered the early separation offered to others inducted at the same time as he. In the ordinary course of events the separation processing begins approximately

18 days in advance of the expiration of term of service. This did not happen in his case.

Discharge: July, 1955 - "General Discharge under honorable conditions"

Note on Lie Detector Test

This test was made at the request of the individual and the results of it were submitted by direct expert testimony at the hearing. The questions asked involved all degrees of relationship to Communist and subversive organizations and attitudes towards sabotage, espionage, treason, and sedition. They further concerned friendships with people who might have been engaged in any of these activities or have been sympathetic with such organizations. Questions were also asked concerning his specific knowledge of the organizations concerned. The test extended over a three day period.

The results of these tests were as follows:

- a. The reactions displayed on the charts were not indicative of deception.
- b. The subject answered the questions truthfully and to the best of his knowledge.

Inducted: July, 1953

Loyalty Certificate, DD 98: Several days after induction.

Answered "none" to the pertinent questions.

Personal History, DD 398: October, 1953

Letter of Allegations: June, 1954

- a. In ____ **, you were a member of American Youth for Democracy, an organization cited as subversive and Communist by the Attorney General of the United States.
- b. In July 1953 you falsified loyalty forms DD 98 and 98a by signing them in the negative without qualification inasmuch as you admitted under Item 16 of the Personal History Form in October 1953 that you had been a member of American Youth for Democracy.
- c. In ____ *, you campaigned for the Independent Progressive Party, an organization which has been cited by the California Committee on Un-American Activities as an example of an organization which has come under the control of the Communist Party.
- d. In ____ *, you were registered with the Independent Progressive Party.
- e. You have a mother who:
 1. was a member of the Communist Party from ____ to ____ * bearing card No. ____.
 2. was listed in the Dies Committee's report, ____.

f. You have a grandmother who is a Russian born Communist and who was represented in the Communist Party papers as "fanatically devoted to the Soviet Union and Communism" and as late as ____* was reported to be an active member of the Communist Party.

g. You have a brother who:

1. in ____***, was a member of the Communist Party.
2. in ____*, was listed as a member of American Youth for Democracy.
3. stated in ____*, that he was not suitable for a position of top secret classification because of his socialist background.

(* within three years of induction.

** over five years prior to induction.

*** over twelve years prior to induction.)

Answer:

He was accorded seven days to answer in writing or ask for a hearing. Within the seven day period he asked for a hearing and answered that he neither confirmed nor denied any of the allegations except (b), concerning which he stated, "This was done accidentally since I am quite aware of the seriousness of falsification and also because it is irrational to deny in one document and confirm in the other."

Hearing: August, 1954

The Field Board of Inquiry recommended that he receive a

a "General Discharge under Honorable Conditions." He submitted a brief to the Army Review Board in support of his contention that he should receive an Honorable Discharge.

Reconvened Hearing: October 1954

The Field Board was reconvened because it had failed to find the truth or falsity of each of the allegations. The findings and recommendations of the reconvened Field Board were not revealed.

Discharge: December, 1954 - "Undesirable"

Inducted: Mid-1953

Loyalty Certificate DD 98: Refused to sign.

He stated that he did not believe in loyalty oaths "as such" and declined to claim the Federal Constitutional Privilege.

Letter of Allegations: March, 1955

- a. In 1953 you refused to sign Loyalty Certificate DD 98 "stating you did not believe in loyalty oaths as such" and declining to claim the Federal Constitutional Privilege.
- b. In ____, ____, and ____, you attended meetings of the Labor Youth League which has been designated by the Attorney General of the United States as being a Communist front organization.
- c. In ____, you signed a petition circulated by, and registered to vote for, the Independent Progressive Party, which has been cited as a Communist dominated organization by the California Committee on Un-American Activities.
- d. In ____, accompanied by your wife, you attended meetings sponsored by the Daily Peoples World, a West Coast Communist Paper.
- e. You have a wife, ____, who:
 1. in ____, ____, and ____ attended meetings of the Labor Youth League.
 2. in ____, signed a nominating petition and registered with the Independent Progressive Party

3. in _____, was elected Educational Director of the
_____ Section of the _____ Labor
Youth League.

4. in _____, was a subscriber to the Daily Peoples
World

Counsel entered his appearance in April, 1955 and requested
a G2 Summary of Information in the Confidential file.
This was supplied him.

Hearing: Scheduled for mid-May 1955

Inducted: August, 1953

Loyalty Certificate DD 98 and 98A: After induction.

Refused to answer, claiming Federal Constitutional Privilege.

Personal History Form DD 398, item 16:

Refused to answer, claiming Federal Constitutional Privilege.

Letter of Allegations: June, 1954:

- a. In August, 1953, you claimed the Federal Constitutional Privilege in refusing to answer Loyalty Forms DD 98 and DD 98A, and in item 16 of DD 398.
- b. In ____ and ____, you were a member of the Communist Party.
- c. In ____, you were a member of American Youth for Democracy.
- d. In ____ and ____, you were a member of the Civil Rights Congress.
- e. In ____ and ____, you were a member of the Labor Youth League.
- f. In ____, you were affiliated with Negro Labor Council.
- g. In ____, you attended a meeting sponsored by the California Emergency Defense Committee which has been cited as subversive and Communist by the Attorney General of the United States.
- h. In ____, you were affiliated with the California Labor

School which has been cited as subversive and Communist by the Attorney General of the United States.

- i. In ____ and ____, you attended functions of the American Peace Crusade which has been cited as a Communist front organization by the Congressional Committee on Un-American Activities
- j. In ____, you subscribed to the Daily Peoples World, a West Coast Communist newspaper.
- k. In ____, ____, ____, and ____, you corresponded with known Communists.
- l. You have a brother, _____, who was discharged from the United States Army under AR 615-370.

Hearing: August, 1954:

Defense counsel objected generally to the allegations on the basis that they all referred to alleged activities prior to entry into the Armed Forces, and, therefore, had nothing to do with the character of the service rendered. He further claimed that they were in violation of the Constitution, the law, and valid regulations made thereunder and that, further, they were in violation of the ordinary standards of decency in a democratic community. He further alleged that they were in violation of the First Amendment and constituted a bill of attainder. He claimed that the hearing was an ex post facto proceeding, and in violation of Article 31 of the Uniform Code of Military Justice in that it improperly shifted the burden of proof.

Counsel objected to the specific charges in the Letter of Allegations as follows:

- a. Constitutes entrapment if his valid claim of the federal constitutional privilege can be used as an allegation against him.
- b. The Communist Party membership charge is void as being ambiguous and uncertain in that it fails to claim that such alleged membership was for some illegal purpose or, as a result of it, some illegal purpose was carried out, or covers part of a combination or conspiracy to carry out such a purpose.
- c. The alleged membership in American Youth for Democracy is invalid for the same reasons given concerning (b) and for the further reason that the listing of all organizations by the Attorney General, including AYD, as subversive and Communist had been declared by the Supreme Court as in violation of due process.
- d. and e. Allegations concerning the Civil Rights Congress and the Labor Youth League are invalid for the same reasons as those advanced in (c).
- f. Allegations concerning the Negro Labor Council are invalid for the same reasons as those advanced in (c), with the additional reason that the word "affiliated" cannot be understood or ascertained in that it is vague and incapable of definition.
- g. The allegation is invalid for the same reasons as those advanced in (c), with the additional reason that the term "attended a meeting" is without allegation of wrongdoing and that, if such an allegation is allowed to stand, it is a means whereby any citizen can have his basic

rights destroyed.

- h. and i. Basically the same objections are advanced.
- j. The allegation concerning the subscription to the Daily Peoples World is improper in that it is vague and is void because there is no allegation as to the basis for determining it to be a West Coast Communist paper and there are no allegations as to whether or not it is engaged in any illegal activities or merely operating as a magazine with mailing privileges, and further there is no allegation that he has done anything wrong in reading or subscribing to it.
- k. The allegation concerning his alleged correspondence with known Communists is improper in that it does not say "to whom 'known'" or what is meant by a Communist and it fails to indicate with whom he corresponded or what the correspondence contained.
- l. The allegation concerning his brother's alleged "Undesirable" discharge from the Army is improper and "a Hitlerite doctrine of guilt upon the basis of family type." Counsel asked what is meant by subversive, asked for facts concerning the alleged brother and whether any tie is alleged for wrongful acts with him and the individual concerned.

The Board over-ruled all these objections on the ground that they were not matters for the Field Board's determination. Defense counsel renewed his objections and then objected to the introduction of the confidential file into evi-

dence without making its contents available to the defense.

The individual refused to take the stand to testify unless the Government opened for defense examinations its confidential file which had been introduced as a government exhibit.

Defense counsel stated that the individual had been deprived of his right to attach a supplemental statement to Loyalty Certificate DD 98 and DD 98A because of the large number of people being processed at the time that it was presented to him and that he never had an opportunity to make a full statement concerning the reasons for his refusal to execute the certificate.

Defense introduced two military personnel, including one officer, as defense witnesses. On cross examination by the Board they were asked such questions as this:

"Did he do a lot of reading?"

"What types of books did he read?"

"Do you remember the names of any particular books?"

"What do you think causes war?"

(Witness answered, "People being greedy and selfish.")

"In other words, you had discussed the problem but never came to any conclusion?"

(Answer: "Well, we were not involved.")

"What side did Private _____ take?"

(Answer: "He was for his country 100%.")

On cross-examination in discussing prisoners of war in Korea the following colloquy took place:

Witness: We talked about it a little bit, wondering why some

of the guys wanted to stay over there since this is such a nice peace loving country. We felt that Red propaganda had a lot to do with it. They were depressed, lonely, hungry, beaten, subject to any kind of punishment. Of course you don't have a clear mind to think with.

President: At Valley Forge that didn't bother them very much did it?

Witness: Pardon, Sir?

President: At Valley Forge that didn't bother them very much did it? Of course they died from it.

Member of Board: Have you discussed germ warfare in Korea?

Witness: No sir, not too much.

Member: Not too much? Did Private _____ ever discuss whether he believed the United States ever participated in germ warfare or not? What do you believe?

Witness: It seems to me that Private _____ - - -

(Defense counsel objects to question on grounds that it is enough to try one man without trying the witness' beliefs at the same time. This objection is overruled.)

Witness: Private _____ didn't believe that they did.

Reconvened Hearing: March 1955

Defense counsel objected to the substituting of a member of the Board who had not heard the testimony of the previous witnesses. This objection was overruled.

A G2 Summary of Information was submitted at the hearing to the individual and his counsel with the warning that no notes could be taken. Defense counsel stated:

"Under protest, I will examine the Summary but I wish to advise the Board so that there will be no mistake about it, so that there will be no claim that I have done anything improper, that it is my intention to examine it carefully, to assimilate the information that is on there, to make notes from my memory of what is on the document, and to utilize those notes for any purpose necessary to protect the interests of my client and to prepare his defense."

President of Board: "I doubt if the Board has any authority over the workings of your mind".

Defense counsel asked for 20 minutes recess or, maybe, "a little longer" to study the five page Summary of Information. Ten minutes were granted.

Upon conclusion of the examination of the Summary of Information, defense counsel charged that there must be extensive deletions from the "Summary" of information that is contained in the file. The Board answered, "Yes." Defense counsel asked, "Are the original charges being enlarged by what is contained here?" He was told that the hearing was based upon the charges but that the "information" would be taken into consideration to support the charges in the letter of allegations.

At the conclusion of the hearing in which no witnesses testified, the individual was asked if he had presented all available information on his own behalf. His counsel answered that he had not presented all available evidence and had been precluded therefrom by reason of the failure of the Army to supply him with full information concerning the information against him. The hearing was adjourned.

Appeal: April 1955

In accordance with the procedures of submitting additional information to the Army Review Board, defense counsel wrote a letter protesting the hearing and citing Secretary of the Army Stevens' letter to Senator McCarthy on February 1, 1955, along with numerous cases. Before any consideration could have been

given to such letter and without any reply thereto, the individual received his discharge.

Discharge: April 1955 - "Undesirable"

The individual was held in the military stockade overnight immediately prior to his discharge.

Case No. 31

The individual is presently 24 years old. He is a member of the Catholic church and attended _____ (Catholic) College in _____. His father, a lawyer, was formerly a member of the Board of Governors of _____ (Catholic) College and is well known in the community as a defender and counsel for allegedly Communist-front organizations. While in college, the individual participated in ROTC but was discharged from the Reserve Corps on the basis that he was not proper officer material. The reasons given being that he did poor paper work and that he objected to the moral implications of strategic bombing.

Inducted: August, 1953

Loyalty Certificate DD 98: About 12 or 13 days after induction.

Claimed the Federal Constitutional Privilege, but stated that his loyalty to the Pope as a Catholic might be considered to be loyalty to a foreign power.

Letter of Allegations: Spring, 1954

This letter was not available for inspection but, according to his attorney father, primarily concerned activities of the father, his discharge from the Reserve Officers Training Corps, and his refusal to execute DD 98.

Field Board Hearing: August, 1954

Counsel made motions asking for the release of at least a summary of the information in the investigative file. The hearing was recessed pending further information concerning this matter.

Re-convened Hearing: February, 1955

The G2 Summary of Information was made available and a ten minute recess was granted for the individual and his counsel to examine it. Counsel objected to the inadequacy of the summary and the hearing was adjourned without any factual defense being presented.

G2 Summary of Information: (Declassified after court action;

see below).

It contains such information as:

"Subject's political beliefs were such that many people would accuse him of being 'pink' but that he should be classified as an idealist who believes in speaking out for what he thought is right; he did not think the Rosenbergs had a fair trial; his father is a member of the National Lawyers Guild; is a Civil Rights Congress attorney and represents many Communist front organizations in the _____ area; subject possessed a copy of the Reporter dated 29 September 1953, and also had copies of the New Republic and one of the Nation. (Files indicate that the Nation and the New Republic both have long records as liberal publications; that they cannot be described as Communist, but they are so infiltrated with the Communist Party policy that they serve the interest of Communists and confuse liberals on many issues.)"

It further indicated that the Reporter had been cited by the California Committee on Un-American Activities in 1948. (It should be noted that the national magazine called "The Reporter" was not in existence in 1948 and that "The Reporter", an

official organ of the National Council of American-Soviet Friendship ceased publication December 15, 1946.)

Discharge: March, 1955 - Undesirable

On March 19, 1955 at approximately 8:30 a.m. individual phoned his father in _____, from camp stating that he was being processed out of the Army with an Undesirable Discharge. His father flew to _____ and at 12:10 p.m. secured a restraining order from District Judge _____. This order was returnable before Judge _____ on March 28, 1955. The order was telephoned to _____ the headquarters of the _____ Army, and to the camp where it was read to the officer of the day. The attorney father took the signed order and delivered it in person to the camp at approximately 1:30 p.m. but his son had already received his discharge (at approximately 12:10 p.m.) and had been forcibly removed from the camp at 12:23 p.m. Since the individual had refused to sign the report of separation, it had been delivered to him in

On the return day of the order to show cause, the Army introduced into evidence the letter of allegations and the transcript of the Field Board Hearings. Counsel demanded submission of the G2 Summary of Information. The Army claimed that it could not be introduced because it was "confidential." Judge _____ ordered that he was therewith declassifying it. Subsequently counsel received the G2 Summary of Information from the Pentagon and made a motion to re-open

the hearing before Judge _____ to introduce the G2 summary, which counsel contends is not the same as the summary submitted at the Field Board hearing and contains numerous deletions.

Question of validity of restraining order and of discharge pending before U.S. Court of Appeals.

Case No. 32

Inducted: September 1953

Loyalty Certificate DD 98 and DD 98A: Five days after induction. He claimed the Federal Constitutional Privilege.

Interview:

He stated that "he might have signed a petition at some time, attended a party, talked with people, or have taken some action that might have 'associated' him with one of the organizations listed. Since he planned to take the bar he didn't want his record marred with information that he had sworn that he had never been a member of such organizations and then have it proven that he had some connection with a black-listed organization."

Personal History Form DD 398. Item 16: He answered, "No," but added that he answered in this manner because he "could state specifically that I have never been a member."

Letter of Allegations: March, 1955

- a. In 1953 you refused to execute Loyalty Form DD 98.
- b. In ____ your name was on the records of the Committee for the Protection of the Foreign Born.
- c. In ____, you along with your mother and brother wrote a letter to radio station ____ protesting the cancellation of commentator ____, a well known Communist fronter.
- d. You have a mother who:
 1. in ____ applied for membership in the American Jewish Labor Council,

2. in _____ was reported to be residing with a sister who is a well-known Communist and who has paid dues in the Communist Party through _____,
 3. in _____, _____, and _____, was a member of the International Workers Order, an organization cited as subversive and Communist by the Attorney General of the United States,
 4. in _____ and _____, was listed on the records of the _____ Committee for the Protection of the Foreign Born,
 5. in _____, appeared on the records of the Civil Rights Congress from _____ to _____.
- e. You have a father who was a member of the International Workers Order, an organization cited as subversive and Communist by the Attorney General of the United States.
 - f. You have a brother who, in _____, is reported to have been a signer of a handbill distributed by _____ Civil Rights Congress pickets, denouncing the Federal Grand Jury loyalty quiz.

Answer:

Through assigned Military Counsel, he asked for a hearing, access to all records to be considered in his case, and all confidential material on his case, "notwithstanding the disclosure of the contents of which might prejudice the safety or interest of the United States Government. "

This information was denied him but he was supplied a G2

Summary of Information which indicated that the investigation of his case had taken place between October 1953 and March 1954.

Hearing: Scheduled for May, 1955.

Inducted: October, 1953

Loyalty Certificate DD 98: Several days after induction.

Individual answered "none" to the pertinent questions.

Letter of Allegations: March, 1955

- a. From ____ to ____, you were an active member and official of the Socialist Youth League, an organization cited as subversive and Communist by the Attorney General of the United States.
- b. You were closely associated with the Independent Socialist League, an organization cited as subversive by the Attorney General of the United States.
- c. You have a wife, _____, who was an active member of the Socialist Youth League and the Independent Socialist League.
- d. You listed as a character reference an individual who was associated with Communist organizations.

G2 Summary of Information:

Individual requested a hearing and the G2 Summary of Information was supplied him in advance of receiving the request therefore from his counsel.

Pre-Hearing Motions: April, 1955

Counsel moved that allegations (a), (b) and (c) be deleted for the following reasons:

- a. neither the Socialist Youth League nor the Independent Socialist League had been validly listed by the

Attorney General in that no hearing had been accorded them as required by law.

- b. The Attorney General had notified these organizations that a hearing would be accorded them and their attorney had requested that this hearing be set for June 29, 1955.*
- c. It is improper for the Department of the Army to continue to consider such alleged membership or association as "derogatory information" pending this determination by the Attorney General.

Counsel also requested particulars concerning allegation (d). This information was supplied in the Summary of Information. Counsel further requested a postponement of the date of the hearing for the following reasons:

- a. Inadequate notice (9 days).
- b. The information concerning (d) is essential for the defense.
- c. Unavailability of the civilian defense counsel by reason of the fact that he would be on the West coast on essential business during the period scheduled.

No formal notice of the receipt of the motions was made until the day before the scheduled hearing when the individual was informed that in view of the motions concerning allegations (a), (b) and (c), the hearing was being postponed pending "further determination by the Secretary of the Army."

* This hearing actually began July 18, 1953. This is the first hearing conducted by the Attorney General for any of the listed organizations. It had not been concluded by August 5, 1955.

Hearing: Re-scheduled for mid-August, 1955

Comment:

While most of the information in the G2 Summary of Information can not be divulged at this time, one item is of particular interest. This is: "Subject has a mother-in-law -- who was reported to have been 'lying low as a Communist for a long time' and was supposed to become active in the peace movement again." The Army should be interested to learn that this alleged mother-in-law died in 1940, when the "subject" was eight years of age.

Case No. 34

Inducted: October, 1953

Loyalty Certificate DD 98:

Individual stated that he had been a member of American Youth for Democracy for a brief period in 1945 and that he had been a member of the Socialist Youth League and the Independent Socialist League from 1948 to 1953.

Individual apparently served normally although there was later indication that he was under specially controlled duties.

Department of the Army Message 517159 authorized the early

release of personnel who had had prior services in the Armed Forces upon completion of 24 months of "cumulated service." As the individual had an honorable discharge from the Navy in 1946 after completing almost 1 year of service, he applied for the advance discharge, to be effective in November, 1954. This application was disapproved on the basis of SR 600-310-1, par. 4A, which provided that no one could be released or discharged in advance of the expiration of his term of service while an investigation was pending based upon credible derogatory information. He attempted, through official channels, to obtain clarification of the basis for this "flagging" action and an expedition of his discharge. He was unsuccessful.

Letter of Allegations: January, 1955

- a. From ____ to ____, you were an active member and, as of _____, admitted being sympathetic with the views of the Socialist Youth League, an organization cited as subversive and Communist by the Attorney General.
- b. From ____ to ____, you were an active member and, as of _____, admitted being sympathetic with the views of the Independent Socialist League, an organization cited as being subversive by the Attorney General.
- c. You admitted membership, in ____, in American Youth for Democracy, an organization cited as subversive and Communist by the Attorney General.
- d. You subscribed to Labor Action, a publication cited by the Attorney General as the official organ of the Independent Socialist League, formerly the Workers Party.
- e. You have a father, _____, who was listed as a 1952 subscriber to the Labor Herald, a publication cited as the official organ of the Communist Trade Union Education League by the California Committee on Un-American Activities.

Hearing: February, 1955

Individual was ably represented by assigned military defense counsel who spent a great deal of time in preparation and in acquiring exhibits. He propounded questions to the Board relating to a challenge for cause. These questions related to whether or not the Board members would consider a Socialist, "such as a member of the British Labor Party,"

incapable of rendering full and loyal service to the Army and not necessarily a person whose "retention is inconsistent with national security." As the answers were in the negative, there was no challenge for cause.

As soon as the Board had been qualified, defense moved that the hearing be delayed or adjourned pending receipt of a reply to a letter written by the individual to the Adjutant General in January, 1955. In this letter, the individual had pointed out that prior to receipt of the letter of allegations he had made an application for advance discharge in accordance with the DA message 517159 and that this discharge had been held up because he was under investigation. SR 600-220-1, Section 1, par. 1 provides that, "these regulations should not be used in those cases in which security is not the primary reason for initiation of relief from active duty or discharge action." It was therefore improper, the individual contended, for the hearing to be presently conducted under SR 600-220-1. He stated further, and cited court decisions in support, that if the hearing was conducted it had to conform with the due process requirements of the Uniform Code of Military Justice including the right to be confronted by witnesses against him.

The Board adjourned for three days over a week-end to permit the defense additional time to secure a reply to this letter. When the Board was reconvened and no reply had been received the hearing continued over the defense objection.

After making the customary objections to the failure of the government to introduce any evidence and its consid-

eration of confidential information unavailable to the defense, the defense introduced a number of character witnesses to testify to the high excellence of the individual's work as an instructor. There was also considerable testimony as to his trustworthiness and the high regard in which he was held by his superiors.

In his own defense, the individual testified that he had been a member of AYD for a few months only prior to his enlistment in the Navy in 1945. He stated that he quickly became aware of the nature of the organization and not only withdrew from membership but subsequently publicly denounced it.

He further testified to his long and active record of participation in the activities of the Independent Socialist League and the Socialist Youth League. These activities largely centered around the campus of the University of _____. A large part of the activities involved opposition to Communist efforts to gain control of student organizations. Numerous affidavits were introduced from Norman Thomas and others testifying to the fact that neither the ISL or the SYL had obtained a hearing by the Attorney General on the validity of its listing as a subversive organization even though they had made strenuous attempts to obtain such a hearing over a period of six or more years. Mr. Thomas and others testified in affidavit form to their belief that the organization could not be in any ways considered subversive.

Discharge: May, 1955 - Undesirable

Case No. 35

Inducted: October, 1953

Loyalty Certificate DD 98: Several days after induction.

Answered "none" to the pertinent questions.

Military Career:

The individual has never received any allegations or any indication that he is under investigation other than the fact that for fifteen months of his military career he was not permitted to serve normally. After he completed basic training he was placed in advanced basic training and then continued at the post where inducted in routine unimportant duties. After a year of this he consulted civilian counsel and was told that nothing could be done until some allegations were served against him. After fifteen months, he was transferred to another post and apparently the information which caused him originally to be placed under an administrative hold has either been unsubstantiated or has been deemed insufficient to continue him under specially controlled conditions. He will not know this, however, until the actual date of his discharge in the Fall of 1955. In the meantime, he has served approximately two-thirds of his time of military training to no effect.

Inducted: October, 1953

Loyalty Certificate DD 98: Several days after induction.

Answered "none" to organizations and associations.

He was declared eligible for promotion in June of 1954 but has not been promoted beyond Private 2 although he should be a Corporal in accordance with the work he is doing by now.

Letter of Allegations: February, 1955

- a. In ____ and ____, you were a member of the Civil Rights Congress.
- b. You have subscribed to the Daily Worker, a publication described as the chief journalistic organ of the Communist Party by the Attorney General of the United States.
- c. In ____, you participated in two picket lines protesting the trial of Communist Party leaders.
- d. In ____, you attended the National Labor Conference for Peace, which has been cited by the Congressional Committee on Un-American Activities as having been organized by Communists.
- e. You were a member of the Progressive Party, also known as the Independent Progressive Party, the latter of which has been cited by the California Committee on Un-American Activities as being dominated by the Communists.
- f. You have associated with allegedly card carrying Communist Party members.

- g. In _____, you passed out handbills believed to be backed by a communist organization.
- h. In _____, you passed out handbills denouncing the House Committee on Un-American Activities.
- i. You have a wife, _____, who
1. in _____, was a member of the Civil Rights Congress
 2. in _____ and _____ was a member of the Progressive Party
 3. in _____ was on the mailing list of the Civil Rights Congress
- j. You associated with an individual who
1. in _____ and _____ was an active member of the American Youth for Democracy, an organization which has been cited as Communist by the Attorney General of the United States
 2. in _____ was active in the Labor Youth League, an organization cited as a Communist front by the Attorney General of the United States
 3. in _____ was reported to be active in Communist Party activities
 4. was associated with known Communist sympathizers

Pre-hearing motions

Counsel requested a hearing, and amplification of the charges in advance of hearing. The amplification requested were places and names, dates, nature and extent of associations.

He also requested, concerning allegation (e), the authority for associating the Progressive Party of _____ with the Independent Progressive Party of California. He also made motions to strike allegations (f) and (j) on the basis that they were not brought within the criteria of the regulations.

He received no reply to his motions but was supplied with a G2 Summary of Information in the file.

Hearing: Scheduled for mid-May, 1955

Case No. 37

Inducted: October, 1953

Loyalty Certificate DD 98 and DD 98A: After induction.

Refused to sign claiming Federal Constitutional Privilege.

Personal History Form DD 398: Refused to answer Item 16, claim-
ing Federal Constitutional Privilege.

Letter of Allegations: November, 1954

- a. In 1953, you refused to accomplish loyalty forms DD 98 and DD 98A claiming the federal constitutional privilege.
- b. In _____, you refused to answer section 16 of Personal History Form DD 398, claiming a federal constitutional privilege.
- c. In _____, you were a member of the _____ Club of the Communist Party.
- d. In _____, you were a member of American Youth for Democracy.
- e. In _____, you were a member of the Labor Youth League.
- f. In _____, you were a member of the Independent Progressive Party.
- g. In _____ and _____, you were a subscriber to the Daily Peoples World.
- h. In _____, you were reported to have been sympathetic to the Nationalist Party of Puerto Rico which has been cited as subversive by the Attorney General of the United States.
- i. In _____, you were a member of the Negro Labor Council.
- j. In _____, you were a member of the National Lawyers Guild.

Hearing: Spring, 1955

Allegations of the unconstitutionality of the proceedings
and the impropriety of the allegations were made and denied.
No witnesses were presented.

No Decision had been made by early May, 1955.

Case No. 38

Inducted: November, 1953

Loyalty Certificate DD 98: Several days after induction.

Individual answered "none" in answer to the pertinent questions. In later testimony, he stated that they were all rushed through in the processing and were told "don't bother to read, just sign." He did not have an opportunity to read the list of "subversive organizations." He stated however, when he had later had an opportunity to read the list that he had no reason to change his previous answer.

Personal History Form DD 398: February, 1954

Under remarks he stated, "In 1948 or early 1949 I met some young people who later told me that they were Trotskyites. I went to some social affairs and attended several public meetings. They gave me some of their literature to read and what I understood I did not agree with. Ultimately, by the Summer of 1949, I had severed all contact with them."

Letter of Allegations: April, 1954

- a. From ____ to ____, inclusive, you have an extensive history of membership in, and participation in the activities of, the Socialist Workers Party, an organization cited by the Attorney General of the United States as subversive and Communist.
- b. You were for four years a member of the Trotskyist (Communist) Movement.
- c. You were affiliated with the Workers Party, an organization cited by the Attorney General of the United States as sub-

versive and seeking to alter the form of government of the United States by unconstitutional means.

Answer: April, 1954

He was informed in the letter of allegations that he had seven days in which to make rebuttal in writing to the allegations. He was not informed that he was entitled to a hearing.

In his written reply he stated:

that he denied all of the allegations and believed that they must have been "motivated by malice because they are all untrue." He set forth the statement he had made on DD 398 and stated, further, "I have always considered myself a loyal citizen of this country. I reaffirm that this is the extent of my association with the Socialist Workers Party; I was never in political sympathy with it." He also stated that he had never been a member of the Trotskyist (Communist) Movement or of the Workers Party.

He offered to supply additional information in amplification of his statements if the answers were deemed to be insufficient and he asked that a hearing be accorded him if his answers were considered insufficient, or not sufficient to clear him of the allegations.

Hearing: June, 1954

The regulations were changed at the approximate time when the individual returned his answer to the allegations. This change

entitled him to a hearing.

Individual was represented by civilian counsel. He testified in his own behalf but produced no witnesses or affidavits. He testified as to his military career which had been "excellent," and to his civilian life which had consisted primarily of student life, having secured a Masters degree. His period of employment, outside of part-time student jobs, consisted of a few months work between securing his degree and his induction into the Army. He testified that the only organizations that he had ever belonged to had been the National Honorary Society, the Workmen's Circle, and the National Association for the Advancement of Colored People (for a brief period while in college).

In answer to the specific allegations he stated:

- a. that he had never been a member of or in sympathetic association with the Socialist Workers Party; that he had attended several public campaign meetings of the Socialist Workers Party during the 1948 campaign and that he had heard a debate between Farrell Dobbs (the SWP presidential candidate) and Norman Thomas. He stated that, while in high school and during his first year of college, he had had some association with an organization known as International Socialist Youth (which has not been listed by anyone as "subversive".)

This association had consisted primarily of social affairs and a few public forums. Several of these public meetings had been held in the headquarters of the SWP. He stated that he had never been a member of the International Socialist Youth, that he had no knowledge

of any official connection between the International Socialist Youth and the SWP, if any in fact existed, and that at one meeting of the International Socialist Youth he had publicly denounced from the floor a statement which he understood to be the official position of the SWP in support of the Soviet Union.

The Board found that "you are neither disloyal, subversive, nor a security risk and your discharge from the Army in the interest of national security is not warranted." The Board recommended "that you be retained in the Army with no further action to be taken."

Discharge Announced: August, 1954

Individual phoned his civilian counsel from camp, stating that he had just been informed that he would receive an Undesirable Discharge the following day. Counsel phoned Commanding Officer on Post and spoke to Judge Advocate General's office; then sent a long telegram to Adjutant General in Washington. Counsel demanded deferment of discharge pending investigation and requested immediate conference with Adjutant General. He was notified by telephone the same afternoon that the discharge would be deferred pending investigation and an appointment was made for a conference at the Pentagon the following week.

At this conference which was between civilian counsel, the Chief of the Security Branch of the Army and a member of the Army Review Board, the Army officials explained that the findings of the Field Board were merely a recommendation and were not binding upon the Army Review Board which made the final recommendation to the Secretary of the Army.

Counsel pointed out the basic injustice of this procedure in view of the fact that the Army Review Board was relying on unsworn information in the Confidential File to rebut the sworn statements of the individual before the Field Board whereas the Field Board had both the unsworn statements and the individual before them and had an opportunity to judge their relative probity.

Counsel further pointed out that if the Field Board determination had been adverse, the defense would have had a further opportunity to submit a brief and additional information to the Army Review Board for consideration. Because the Field Board's determination had been favorable the defense had been deprived of this right. The Army officials conceded that this latter objection was a valid one and stated that they would endeavor to secure a revision in the Army regulations to meet this problem. In view of this fact, they stated that the discharge would be deferred in the case of the individual concerned pending further consideration of the matter by the Army Review Board after counsel had had an opportunity to submit a brief and any other further information he cared to.

Several weeks later counsel submitted a memorandum to the Army Review Board in which he summarized the history of the case and the findings of the Field Board of Inquiry. He set forth the detailed information concerning the National Association for the Advancement of Colored People and Workmen's Circle. He also submitted affidavits from Workmen's Circle and NAACP officials.

No reply was ever received from the Army Review Board

and there is no indication that any final action has been taken. However, the individual has been continued in service and, while he was apparently under restricted duties for some months, he is now apparently serving normally.

Inducted: December, 1953

Loyalty Certificate DD 98: Several days after induction.

We refused to sign, stating "I don't want to sign this section because I consider it unreasonable" in reference to the degree of associations with organizations or persons associated with Attorney General organizations.

Letter of Allegations: March, 1955

- a. In _____, you refused to sign loyalty certificate DD 98 and noted "I don't want to sign this section because I consider it unreasonable."
- b. You gave as a character reference an individual whose wife, in _____, was a member of the Communist Party.
- c. You gave as another character reference an individual who was associated with Communist organizations.

Answer: March, 1955

- a. It is untrue that he refused to sign DD 98. He only refused to sign the third section which concerned degrees of association, and he did this on the basis that it was too vague. He contended that he was told that he did not have to sign this part.
- b. and c. The allegations are not sufficiently specific to permit an answer. He had given various names as character references at different times and for different purposes. He further stated that he did not know the political activities or associations of the wives of any of the references which he gave.

He asked for a hearing.

Pre-Hearing Motions: March, 1955

Counsel asked for amplification of the allegations by setting forth the names of the individuals, the degree of associations and the names of the organizations with which they are alleged to have been associated. He made a motion to strike out allegations (b) and (c) as not falling within the criteria of the regulations. Counsel, three weeks later, requested a reply to his previous letter requesting information and renewed his motions. He was notified that the motions could not be acted upon until the Board convened.

Hearing: April, 1955

Counsel objected to the introduction of the confidential file of information into evidence as a Government exhibit without divulging its contents, to the failure of Hearing Boards to announce their findings and recommendations in open session, and to the hearings being based upon regulations published after the occurrence of the alleged incidents.

All of these motions were overruled. He then moved to refer the case back to G2 for further information. This motion was granted.

G2 Summary of Information

This summary was supplied to counsel. It indicated that in the course of an interview of the individual two months after induction he refused to identify a friend whom he thought might have belonged to a listed organization "and further information

concerning his political and ideological thinking could not be extracted from him;" he further "appeared nervous and somewhat pre-occupied, was cooperative but suspicious of the Government concerning his statement on the Loyalty Certificate." Further information in the summary, based upon investigative interviews, was:

- a. for 4 years he had lived in a cooperative student house which subscribed to the Daily Peoples World from ____ to ____ (the terminal date of the subscription being the year after he moved into the house).
- b. while living in this house he associated with two who were considered to be "liberal", one of whom was reported to have been a speaker at a Young Progressive Conference and in opposition to the Velde Committee hearings in _____.
- c. in ____, he gave the name and address of a character reference which is identical with that on the correspondence list of the Independent Progressive Party, Civil Rights Congress, and Labor Youth League. In ____, the wife of another character reference was a member of the Communist Party. Another individual who is believed to be identical with a correspondent was recommended for discharge from the Army Reserve as a subversive.
- d. in ____, a correspondent and close friend was reported to be the "radical" of his class at _____ college and the informant believed that this friend exerted a high degree of influence over him.
- e. 8 other persons interviewed considered him intelligent, reliable, etc. One of these stated that he associated

with persons of liberal views and appeared to share their beliefs; six of them thought that he was loyal.

- f. three military associates stated that they had never had any cause to doubt his loyalty but none of them stated that they could recommend him for a position of trust "because of his reserved attitude and their brief acquaintance with him."

Re-Convened Hearing: Scheduled for mid-May, 1955

Inducted: 1954

Loyalty Certificate DD 98: Several days after induction.

Claimed Federal Constitutional privilege.

Letter of Allegations: June, 1954

- a. In _____, while in high school you wrote a biography of Lenin in which you extolled the efforts of Lenin and Stalin.
- b. In high school you wrote an examination paper on your dislike of capitalism which you said was called Democracy to make it sound rosy.
- c. You carried Russian publications to college classes.
- d. You were reported to have attempted to convert children of your neighborhood to Communism through distribution of Communistic literature and through teaching Communist theory and doctrine.
- e. You are reported to have advocated the principles of Communism.
- f. You have a mother _____, who:
 1. from _____ to _____, was an active member of the Communist Party and was reliably reported active as late as _____.
 2. attends Communist front meetings, those of the International Workers Order in particular. The

International Workers Order has been cited as subversive and Communist by the Attorney General of the United States.

3. in _____, was listed as a member of the International Workers Order.
4. entertains an admiration for the Soviet Union and Stalin, whom she considered the "Saviour" of the Russian people.
5. was active in the Civil Rights Congress, an organization cited as subversive and Communist by the Attorney General of the United States.
6. was reported, along with your father, _____, to have attempted to convert the neighborhood children to Communism by distributing propaganda of the Communist Party line to them.
7. was reported, along with your father, to have had Communist Party meetings in their home.

g. You have a father, _____, who:

1. from _____ to _____, was an active member of the Communist Party and was reliably reported active as late as _____.
2. was a delegate to the state convention of the Communist Political Association from _____ to _____, held in _____.
3. in _____, organized a local Communist Party club.
4. in _____, was active in the Communist sponsored Independent Progressive Party.

5. in _____, was active in the Civil Rights Congress.
6. subscribes to the Daily Peoples World and in _____, was an active distributor of the publication. The Daily Peoples World has been cited by the Special Committee on Un-American Activities as the West coast organ of the Communist Party
7. in _____ to _____, subscribed to the Daily Worker, which has been cited by the Special Committee on Un-American Activities as an organ of the Communist Party.

- h. You consider your father's political views sensible and intend to go along with them, although you deny that your parents are or ever were Communists.

Hearing: August, 1954

Defense counsel's objections to the legality and constitutionality of the proceedings were over-ruled as was his objection to the introduction as a Government exhibit of the Notice of Hearing which set forth the purpose of the hearing as "to give the individual concerned an opportunity to show cause why he should remain in the Army." Defense counsel then analyzed the allegations showing that they were vague and had no bearing upon the character of the service the individual had rendered in the Army. He demanded a bill of particulars and was over-ruled. He then stated that the individual would remain silent subject to possibly testifying if additional information concerning the charges was made available to him.

Several military personnel testified as defense witnesses, stating that his record was excellent in all respects, that he was very cooperative, that his main interests were in art and music, and that the only remarks they had ever heard him make about Communism were to ridicule it and to make fun of Communist propaganda methods. Members of the Board cross-examined these witnesses concerning their own political beliefs and whether or not they ever heard the individual talk about "strikes in the steel mills, etc."

The meeting was thereupon adjourned.

Reconvened Hearing: March, 1955

Counsel's objection to a different hearing board was overruled. Defense counsel was presented with a G2 Summary of Confidential Information in the file and was told, "You will not be permitted to make any copies, extracts, or memoranda of this Summary of Information and will be required to return this document prior to the close of the hearing." Counsel's objections to these restrictions were overruled and the hearing was recessed for 9 minutes to give defense counsel and the individual an opportunity to study the Summary.

Defense counsel objected to the Summary of Information and the manner in which it was made available to him and the individual. He discussed in detail the contents of the Summary, pointing out that the information it contained was either insufficient or immaterial. All of this discussion concerning the Summary of Information was deleted from the official trans-

cript of the hearing given to the individual and every other reference to the summary was likewise deleted.

In April, 1955, defense counsel wrote to the Adjutant General protesting the hearing and protesting the deletions from the transcript stating that it was impossible to set forth an adequate argument to the Army Review Board without having a complete and accurate transcript of the hearing.

No decision had been rendered as of early May, 1955.

Inducted: 1954

Loyalty Certificate DD 98: After induction.

Refused to sign claiming Federal Constitutional Privilege.

Letter of Allegations: October, 1954

- a. You refused to accomplish Loyalty Certificate DD 98 and DD 98A.
- b. In _____, you applied for membership in American Youth for Democracy.
- c. In _____, you applied for membership in _____ (branch), International Workers Order.
- d. In _____, you rented a truck from which Communist literature was distributed.
- e. In _____, you sent birthday greetings and communications to Eugene Dennis, National Secretary, Communist Party, USA.
- f. In _____, you transferred from the _____ to the _____ division of _____, Communist Party.
- g. In _____, you were a delegate to the Third World Festival of Youth and Students for Peace held in the Eastern Sector of Berlin.
- h. In _____, you were an active member of the Labor Youth League.
- i. In _____, you held a position of leadership in the Labor Youth League on the campus of the University of _____.
- j. In _____, you were the chairman of and active in the Independent Progressive Party Club at the University of _____.

- k. In _____, and _____, you wrote articles for a student publication which follows the Communist Party line.
- l. In _____, _____, _____, and _____, you subscribed to the Daily Peoples World.
- m. At a Communist Party Club meeting in _____, you were designated as the contact for contributions to the Daily Peoples World.
- n. In _____, you attended a meeting of the _____ Committee for the Arts, Sciences and Professions.
- o. You were believed to be a Communist and were an ardent reader of Marx and Engels.
- p. In _____, you were observed entering a meeting sponsored by the Daily Peoples World in _____.
- q. You have been reported to be an active member of the Labor Youth League in _____.
- r. You listed as a character reference, _____, who:
1. in _____, appeared on the records of the Civil Rights Congress
 2. in _____*, attended functions sponsored by the _____ Committee of the Communist Party.
- s. You listed as a character reference, _____, who:
1. in _____, was listed as a paid up member of the _____ Committee for the Arts, Sciences and Professions
 2. in _____ and _____ appeared on the mailing list of the _____ Committee for the Arts, Sciences and Professions.

(* over 10 years prior to induction)

Hearing: March 1955

G2 Summary of Information in the file was submitted to the individual and his counsel after the hearing had opened. Counsel made the usual constitutional objections to the validity of the hearing and to the G2 Summary. The individual concerned did not take the stand in his own defense pending making available to him the confidential file of information against him. Four military personnel, including one Lieutenant Colonel, testified as character witnesses. There was no cross-examination by the Board. Two written statements concerning the individual's character were introduced into evidence. There was no further testimony.

Discharge: April, 1955 - "Undesirable".

The individual was removed from the military base at which he was stationed by helicopter to another base in the area where he was escorted off the military reservation.

Case No. 42

Inducted: 1954

Loyalty Certificate DD 98 and DD 98A: Several days after induction.

Form 98 was signed "none" in reference to associations with organizations that were attempting to alter the form of government by unconstitutional means. On form 98A containing the Attorney General's list he claimed Federal Constitutional Privilege..

Personal History Form DD 398, Item 16: Claimed Federal Constitutional Privilege.

Letter of Allegations: April, 1955

- a. In 1954, you signed loyalty certificate 98A and item 16 of the personal history form DD 398 claiming the Federal Constitutional Privilege.
- b. In ____, you received the Daily Peoples World, cited as an official organ of the Communist Party on the West coast by the Special Committee on Un-American Activities.
- c. You were reported as having been a subscriber to New Challenge, published by the Labor Youth League, an organization which has been cited as Communist by the Attorney General of the United States.
- d. You have a father, ____, who exercises a strong influence over you and;
 1. from ____ to ____ was an active member of the Communist Party of ____
 2. in ____ and ____ was a lecturer and in ____ an official of the California Labor School which has

been cited as subversive and Communist by the
Attorney General of the United States

3. in _____ was on the mailing list of the Civil Rights Congress, an organization which has been cited as subversive and Communist by the Attorney General of the United States
 4. was on the membership list of the National Negro Congress, an organization which has been cited as subversive and Communist by the Attorney General of the United States
 5. subscribed to the Daily Peoples World
 6. associated with the Independent Progressive Party, which has been cited as a Communist dominated organization by the California Committee on Un-American Activities
 7. was reported as buying and reading over a considerable period the Daily Worker which has been cited as the chief journalistic mouthpiece of the Communist Party by the Special Committee on Un-American Activities, and the New Masses, a publication described as a Communist periodical by the Attorney General of the United States.
- e. You have had close and continuing association with your step-mother, _____, who in _____ and _____ was a member of the Communist Party.
- f. You listed as a character reference an individual associated with Communist front groups.

(Allegation (e) refers to dates occurring 17 to 10 years
prior to induction)

Hearing requested but not scheduled by late May, 1955

Inducted: 1954

Loyalty Certificate DD 98:

Claimed the Federal Constitutional Privilege.

Letter of Allegations: March, 1955

- a. In 1954, you refused to execute the Loyalty Certificate DD 98.
- b. In ____ **, you were a member of American Youth for Democracy, an organization cited as subversive and Communist by the Attorney General of the United States.
- c. In ____ **, your name appeared on the mailing list of the Civil Rights Congress, an organization cited as subversive and Communist by the Attorney General of the United States.
- d. In ____, you corresponded with an individual who was an active member of the Communist Party.
- e. You have a mother who, in ____ * and ____ *, was a member of the Communist Party.

(* over five years prior to induction)

(** over ten years prior to induction)

Hearing:

Requested, but not scheduled by early May, 1955

Inducted: January, 1954

Loyalty Certificate DD 98: Several days after induction.

Individual answered "no" to all of the listed organizations, and to degrees of relationship to Communist organizations or organizations that advocated the overthrow of the government by unconstitutional means. To the question concerning other organizations that he belonged to which he believed might have been under Communist control or influence, he stated: "When I was fifteen years old, I answered an ad to take guitar lessons with an organization known as '_____'. After several lessons I attended a folk song session of this school and decided that the organization was strongly influenced by the Communists and therefore I did not attend any more lessons." (The named organization has not been listed by the Attorney General of the United States as a Communist or subversive organization.)

Military Career:

After completing basic training, he was assigned to advanced basic training and, after he had completed this, he was assigned to routine and unimportant duties at the post at which he had been inducted. After about eight months of such activity, his father, a lawyer, made inquiries to the Commander of the Post and met with the Chief Security Officer. The father was told that because of the likelihood that the son would be cleared his case had to wait until more ser-

ious cases were processed. After almost twelve months the individual was transferred to another Post and has apparently been cleared. He will not know this, however, until the completion of his two years of active service and in the meantime 50% of his assigned military training has been wasted in unimportant duties.

Inducted: February 1954

Loyalty Certificate DD 98 and DD 98A: After induction.

Individual stated, "I do not wish to sign this particular oath because of reasons of possible self-incrimination and for personal reasons; however, I am willing to sign a loyalty oath of my own phrasing." On 98A (the Attorney General's list) he stated, "I saw the Attorney General's list of organizations and my signature below signifies only that I have read the list and does not necessarily imply any relationship with any of the said organizations."

Letter of Allegations: June 1954:

- a. In _____*, you were a member or affiliated with the Communist Party.
- b. In _____, you were reportedly a member of the Labor Youth League.
- c. In _____, you associated with known Communists.
- d. You refused to accomplish Loyalty Certificate, forms DD 98 and DD 98A.
- e. You have a mother who is or was a member of the Communist Party.
- f. You have a brother who is or was a member of the Communist Party.

(* over 5 years prior to induction.)

Answer:

He was given seven days in which to file a written answer or request a hearing. He requested a hearing.

Hearing: Summer 1954

Defense counsel entered numerous objections to the content of the proceedings, the invalidity of the allegations, and the failure of the Army to supply the individual with the information against him in the file. All of these objections were overruled.

The individual did not take the stand in his own defense, pending receipt of the information in the file. Two military personnel were placed on the stand by the defense. On cross-examination, such questions as these were asked by members of the Board of the witnesses:

"Did he ever talk about war in Indochina or Korea?"
(Witness couldn't remember that he had.)

"Did he do a lot of reading?"
(Witness thought he remembered that he did.)

"What type of books did he read?"
(Witness didn't remember.)

"You don't remember a single type of book, whether it was a history book, economics, fiction, or what it was?"
(Witness didn't.)

Reconvened Hearing: April 1955

A G2 Summary of Information of the file was submitted to the individual and his counsel after the hearing had opened. Counsel protested that the G2 Summary had not been requested but rather that, seven months previously, they had requested an opportunity

to examine all records in the file concerning the allegations against the individual. His objections were overruled and he was told that "you may have as much time as you need for study of the Summary of Information" but no recess was granted for such a study. The President of the Board stated that "for the purpose of these proceedings the Summary of Information will not be in front of you when you are making your statement and your objections to the proceedings." This ruling was later modified and the G2 Summary was made available to defense counsel throughout the hearing but had to be surrendered at the end of the hearing.

No decision had been rendered as of early May, 1955

Case No. 46

Inducted: February, 1954

Loyalty Certificate DD 98: Several days after induction.

He claimed Federal Constitutional Privilege.

Interview: Several days after refusing to execute DD 98.

He stated that it was not the Army's business to know his past affiliations in civilian life. He refused to give any names or persons or organizations.

Personal History Form DD 398, Item 16: Refused to answer.

Letter of Allegations: March, 1955

- a. You refused to sign Loyalty Form DD 98 claiming the Federal Constitutional Privilege.
- b. You declined to answer item 16 on Personal History Form DD 398.
- c. In ____*, and ____*, you were a member of the Communist Party.
- d. You have been a member of the Labor Youth League, an organization cited as Communist by the Attorney General of the United States.
- e. You have been a member of American Youth for Democracy, an organization cited as subversive and Communist by the Attorney General of the United States.
- f. You had a father (deceased ____*) who was an active member of the Communist Party.
- g. You have a mother who:
 1. is an active member of the Communist Party,

2. in ____*, was an official of the Congress of American Women which is an organization cited as subversive and Communist by the Attorney General of the United States.
3. In ____*, was a circulator and signer of a petition to place the Independent Progressive Party on the ____* primary ballot, and, in ____*, registered with the Independent Progressive Party, an organization cited by the California Committee on Un-American Activities.

(* over five years prior to induction)

Hearing: Scheduled for May, 1955.

Inducted: May, 1954

Loyalty Certificate DD 98:

Claimed Federal Constitutional Privilege.

The _____ Army Headquarters recommended him for discharge, because of his claiming the Federal Constitutional Privilege, within two weeks of his induction. He was not discharged, however, and went through normal basic training and then was placed under an administrative hold and the rest of his military career consisted of doing odd jobs around the base to which he was assigned.

Letter of Allegations: February, 1955 (These allegations are

not verbatim as the file was not available for examination by the investigator but was summarized to him by the civilian counsel for the individual.)

- a. You were a member of the Communist Party and of youth groups of the Communist Party.
- b. You were a member of the Labor Youth League as recently as ____ (year of induction).
- c. You were a Communist Party delegate to the American Peace Crusade in Washington, D.C.

Hearing: March, 1955

The G2 Summary of Information was supplied to counsel in advance of the hearing but its contents are not available.

No evidence was introduced at the hearing by the government but it was stated that the Board would go into closed session to examine the confidential file. The individual did not take the

stand but witnesses testified as to his general reputation for trustworthiness and loyalty. There was no cross-examination of the witnesses and no questions asked by the Board.

No decision had been rendered as of early June, 1955.

Inducted: May, 1954

Loyalty Certificate DD 98: Refused to sign.

Personal History Form DD 398: Answered "none" to the pertinent questions concerning membership in organizations seeking to overthrow the government by unconstitutional means.

Letter of Allegations: July, 1954.

- a. You were a member of American Youth for Democracy, an organization cited by the Attorney General as Communist.
- b. You were a member of the Labor Youth League an organization cited by the Attorney General as Communist.
- c. You supported a witness in his defying the _____ State senatorial committee hearings on Communist infiltration in the schools.
- d. You have a father, who:
 1. was a card carrying member of the Communist Party during ____ (2 years in the 1930's).
 2. was active in various organizations listed by the Attorney General as Communist or subversive.
 3. made two trips to the Soviet Union in ____ (the 1930's) as prizes from a Communist magazine subscription drive.
 4. in ____ (the 1930's), and also in ____, subscribed to the Daily Peoples World.
- e. You have a mother, who:
 1. has been a member of pro-Communist organizations
 2. in ____ (the 1930's), signed a Communist Party petition.

f. You have a sister, who:

1. was a member and official of a chapter of the Communist Party.
2. has been a member of pro-Communist organizations.

Hearing: Originally scheduled for August, 1954 but was postponed for one month at the request of defense counsel.

A request for further information was denied. No file of information was introduced at the hearing until the Board was reminded by the defense counsel and then a sealed manila envelope containing confidential information was introduced over defense counsel's protest. Defense counsel challenged the entire Board and states that he did this for the purpose of bringing to the Board's attention the specific regulations calling for a different standard for draftees over enlisted men or officers. The Field Board announced their findings to the effect that the allegations had been sustained and recommended a "General Discharge".

When the transcript was received, defense counsel found it to be almost completely inaccurate and submitted a memo in October, 1954 to the Department of the Army pointing out the inaccuracies and arguing his legal points. He was informed that his memorandum "was considered before taking final action." Defense counsel feels that this is unlikely, however.

Discharge: October, 1954 - "General Discharge Under Honorable Conditions"

Inducted: October, 1954

Loyalty Certificate DD 98: Several days after induction.

All of the information contained in the letter of allegations except (e) was volunteered both in the DD 98 Form executed at the time of induction and in two prior loyalty forms executed while in ROTC in college.

Letter of Allegations: April, 1955

- a. From April to October ____, you were vice-president of your high school chapter of American Youth for Democracy, an organization cited as Communist by the Attorney General of the United States.
- b. From ____ to approximately ____*, you were a member of American Youth for Democracy.
- c. From ____ to ____, you were a member of the Young Progressives of America, an organization reliably reported to be a "training ground for embryo Communists."
- d. From ____ to ____* you attended the Jefferson School of Social Science which has been cited by the Attorney General of the United States as "an adjunct of the Communist Party."
- e. You were reported to be a member of the Young Communist League in _____.**
- f. You were closely associated with your mother, _____, a reported Communist Party member, and continue to correspond with her.

Notes on Allegations:

* over five years prior to induction.

All other dates are 8 or more years prior to induction.

Some of them going back to 10 years prior to induction.

** If allegation (e) is true then individual must have been a member prior to the age of 9.

Hearing: Scheduled for early June, 1955.

Additional Notes:

While in college individual took compulsory ROTC and volunteered full information concerning his youthful activities on the initial loyalty certificate he executed. In Advance ROTC he again executed a loyalty certificate and again volunteered full information. Despite an excellent record in his ROTC courses, he was denied a commission. At the suggestion of his college commanding officer he sought and obtained an FBI interview in which he disclosed all the information that was available to him. He then sought to enlist in the regular Army and was denied enlistment.